



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes            OP MNR MNSD FF

### Introduction

This hearing dealt with applications by the tenants and by the landlord. The tenants applied to cancel a 10 day Notice to End Tenancy for unpaid rent. The landlord applied for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing.

At the hearing the tenants acknowledged that they have not paid the outstanding rent and utilities due to a loss of employment and other personal circumstances and they filed the application to cancel the Notice to End Tenancy because they were seeking more time pay and to find new accommodation. The tenants stated at the hearing that they have found a new place to live, but will not be able to move to the new accommodation for 10 days and they will be unable to pay rent to that landlord in the meantime.

### Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

### Background and Evidence

This tenancy began on October 1, 2013. The rent is \$1,100.00 due in advance on the first day of each month. The tenants paid a security deposit of \$550.00 at the start of the tenancy. Although not stated in the tenancy agreement, the utilities are shared between the landlord and the tenants and the tenants are responsible for paying 50% of the utilities upon presentation of the utility bills. The tenant did not pay the full rent for February when it was due. They paid \$600.00, leaving \$500.00 outstanding. They did not pay rent for March and on March 3, 2015 the landlord personally served the tenants with a Notice to End Tenancy for non-payment of rent by handing it to the female tenant at the rental unit. After they received the Notice to End Tenancy the tenants paid the landlord the sum of \$200.00 on March 6<sup>th</sup>, but they have made no payments since March 6<sup>th</sup> and rent for April is now outstanding.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. The tenants applied to dispute the Notice to End Tenancy, but they have no valid grounds to dispute the Notice to End Tenancy; an inability to pay rent is not a ground for disputing a Notice to End Tenancy. The tenants' application to cancel the Notice to End Tenancy is therefore dismissed without leave to reapply. Taking into account the \$200.00 payment made on March 6<sup>th</sup>, the tenants owe \$300.00 in rent for February and the full amount of rent for March and April, for a total amount unpaid rent of \$2,500.00. The landlord submitted copies of utility bills for gas and electricity. He said that the tenants failed to pay their 50% portion of those bills. The tenant's portion of those accounts amounts to \$397.15 and I allow the landlord's claim for utilities in the said amount, for a total claim of \$2,897.15.

The landlord claimed amounts for utilities for March and April, but there are no bills to support these claims. It remains to be seen when the tenants will vacate the rental unit and the landlord's claims for utilities for March and April are dismissed with leave to reapply.

### Conclusion

*Order of Possession* - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

*Monetary Order and Security Deposit* - I find that the landlord has established a total monetary claim of \$2,897.15 for the outstanding rent and utilities. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$2,947.15. I order that the landlord retain the deposit and interest of \$550.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,397.15. This order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 15, 2015

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Residential Tenancy Branch

