



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 0941 in order to enable the tenants to connect with this teleconference hearing scheduled for 0930. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that the landlord served the tenants with the dispute resolution package on 7 April 2015 by registered mail. The landlord provided me with Canada Post tracking numbers. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that the landlord served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 11 March 2015 by registered mail. The landlord provided me with a Canada Post tracking number. On the basis of this evidence, I am satisfied that the tenants were deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

Preliminary Issue – Amendment to Landlord's Application

At the hearing, the agent stated that the tenants had vacated the rental unit. As the tenants had vacated the rental unit, the landlord no longer required an order of possession. As such, the agent asked to amend the landlord's application to withdraw the request for an order of possession. As there is no prejudice to the tenants in allowing the landlord to make this amendment to her claim, I allowed it.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 January 2015. I was provided with a tenancy agreement dated 1 January 2015. Monthly rent of \$1,900.00 was payable on the first. The agent testified that the landlord continues to hold the tenants' security and pet damage deposits totalling \$1,200.00, which was collected at the beginning of the tenancy.

On 11 March 2015, the landlord served the tenants with the 10 Day Notice by registered mail. The 10 Day Notice was dated 11 March 2015 and set out an effective date of 21 March 2015. The notice set out that the tenants had failed to pay \$2,900.00, which was due 1 March 2015.

The agent testified that the tenants paid rent for February partially in cash and partially by a cheque made out in the amount of \$1,200.00. The agent testified that this cheque was not honoured by the bank as the account on which it was drawn contained insufficient funds. The agent testified that the tenants failed to pay rent for March or April.

The agent testified that the tenants told the landlord that possession would return to her on 16 or 17 April 2015. The landlord confirmed on 20 April 2015 that the rental unit was vacant.

The landlord's application seeks that she claims for rental arrears totaling \$4,800.00; however, the actual rental arrears set out by the landlord total \$5,000.00:

Item	Amount
Unpaid February Rent	\$1,200.00
Unpaid March Rent	1,900.00
Unpaid April Rent	1,900.00
<b>Total Rent Arrears</b>	<b>\$5,000.00</b>

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

As the tenants did not vacate the rental unit until mid-April they are liable for all of April's rent as their tenancy agreement sets out that rent is due on the first.

The agent has provided sworn and uncontested testimony that the tenants have unpaid rental arrears totaling \$5,000.00; however, the amount on the 10 Day Notice (\$2,900.00) plus rent for April (\$1,900.00) would only be equal to \$4,800.00. The landlord has elected to limit her claim to \$4,800.00 on her application. I find that the landlord has proven her entitlement to the claimed amount. The landlord is entitled to a monetary order for \$4,800.00.

The landlord applied to keep the tenants' security deposit and pet damage deposit. I allow the landlord to retain the security and pet damage deposits in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,650.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Claimed Unpaid Rent	\$4,800.00
Offset Security Deposit	-1,200.00
Recover Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$3,650.00</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: May 12, 2015

---

Residential Tenancy Branch

