



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application.

The landlords both attended and each gave affirmed testimony. However, despite being individually personally served with the Landlord's Application for Dispute Resolution and notice of this hearing on April 2, 2015, no one for the tenants attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the hearing were the landlords. One of the landlords testified that he personally handed the hearing package to each of the tenants on that date, at separate times during that date, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*. The testimony and all evidence of the landlords has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Have the landlords established a monetary claim for unpaid rent?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The first landlord** testified that this month-to-month tenancy began in February, 2010 and the tenants still reside in the rental unit. Rent in the amount of \$1,300.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the

landlord collected a security deposit from the tenants, which is still held in trust by the landlords, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided, and the landlord is named as a different person as the landlords who attended this hearing and made the application for dispute resolution, however the landlord testified that the person named in the tenancy agreement is also an owner; there are 4 owners of the rental unit including the landlords who made the application.

The tenants failed to pay rent for the month of March, 2015 and the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent of Utilities by placing it in the mailbox of the rental unit on March 23, 2015. A copy of the notice has been provided and it is dated March 23, 2015 and contains an expected date of vacancy of April 5, 2015 for unpaid rent in the amount of \$1,300.00 that was due on March 1, 2015. The tenants have not paid any rent since the issuance of the notice and have not served the landlords with an application for dispute resolution disputing the notice.

**The second landlord** testified that the tenants paid a security deposit to the landlords at the outset of the tenancy in the amount of \$650.00 which is still held in trust by the landlords.

The tenants have not paid any rent since the issuance of the notice, and the landlord has not been served with an application for dispute resolution disputing the notice.

The landlords claim unpaid rent to the end of May, 2015 totalling \$3,900.00, recovery of the \$50.00 filing fee and an order permitting the landlords to keep the security deposit. The landlord also requests loss of revenue for the month of June, 2015 for \$1,300.00, although no evidence of ability to re-rent has been provided.

### Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a tenant has 5 days to pay the rent or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in the notice, which must be no less than 10 days after service or deemed service. The landlord testified that the notice was served on March 23, 2015 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or March 26, 2015. The tenants did not dispute the notice or pay the rent in full by March 31, 2015, and therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy effective April 5, 2015, which has already passed, and the landlords are entitled to an Order of Possession on 2 days notice to the tenants.

I also accept the testimony of the landlords that the tenants have not paid any rent since the issuance of the notice and arrears have now accumulated to \$3,900.00 for March, April and May, 2015, and the landlords are entitled to a monetary order for that amount. With respect to loss of revenue for the month of June, 2015, I am not satisfied that the landlords have established that the rental unit cannot be re-rented for June 1, 2015, and I decline to order any amount for loss of revenue.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee.

I hereby order the landlords to keep the \$650.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords for the difference in the amount of \$3,300.00.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenants.

I further order the landlords to keep the \$650.00 security deposit and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,300.00.

These orders are final and binding and may be enforced.

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: May 13, 2015

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Residential Tenancy Branch

