



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      OPR, MNR, 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 and utilities pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants did not attend this hearing, although I waited until 10:13 a.m. in order to enable them to connect with this teleconference hearing scheduled for 10:00 a.m. Two of the landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord GKD testified that she handed the tenants a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on June 25, 2015. Landlord BKG testified that she handed the tenants a copy of the landlords' dispute resolution and written evidence packages on July 2, 2015. She also testified that she handed the tenants the remainder of the landlords' written evidence on August 1, 2015, when the tenants vacated the rental unit. Pursuant to sections 88 and 89 of the *Act*, I find that the tenants were served with the above documents by the landlords.

At the commencement of this hearing, the landlords stated that they were no longer in need of an Order of Possession because the tenants vacated the rental unit on August 1, 2015. As such, the landlords' application for an Order of Possession is withdrawn.

The landlords also requested an amended monetary award to enable them to obtain a total of \$3,375.00 in unpaid rent owing from June, July and the first two weeks of August 2015. I allowed this amendment of the landlord's application for a monetary award for unpaid rent.

### Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and utilities? Are the landlords entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The landlords entered into written evidence a copy of the one-year fixed term Residential Tenancy Agreement signed by the parties. This Agreement was to cover the period from March 1, 2015 until March 1, 2016. Monthly rent was set at \$1,350.00, payable in advance on the first of each month, plus utilities. The landlords continue to hold the tenants' \$675.00 security deposit paid on February 21, 2015.

The landlords' original application for a monetary award of \$1,731.00 included unpaid rent for July 2015 and \$40.00 in unpaid utilities.

At the hearing, the landlords testified that the tenants did not pay any rent or utilities for June or July 2015. They said that they commenced efforts to re-rent the premises before the tenants vacated the rental unit. They testified that as of August 15, 2015, they were successful in re-renting these premises for the same \$1,350.00 in monthly rent as the tenants committed to pay for the duration of their one-year fixed term. They said that they lost \$675.00 in rent for August 2015, when the tenants did not abide by the terms of their fixed term tenancy agreement.

#### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Based on the landlords' undisputed sworn testimony and written evidence, I find the landlords are entitled to a monetary award of \$1,350.00 in unpaid rent for each of June and July 2015.

I also find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the March 1, 2016 date specified in that Agreement. As such, the landlords are entitled to compensation for losses they incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for August 2015. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In this situation, I am satisfied that the landlords have taken the necessary and reasonable steps to minimize the tenants' exposure to losses as the landlords were successful in re-renting the rental unit to new tenants as of August 15, 2015. As such, I find that the landlords are entitled to a monetary award of \$675.00 for their loss of rent for the first one-half of August 2015.

Since the landlords did not provide any evidence of specific unpaid utility bills that remain owing, I dismiss this element of the landlords' application without leave to reapply.

Although the landlords' application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No

interest is payable over this period. As the landlords have been successful in their application, I allow them to recover their \$50.00 filing fee from the tenants.

### Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent and their filing fee and to retain the security deposit for this tenancy:

<b>Item</b>	<b>Amount</b>
Unpaid June 2015 Rent	\$1,350.00
Unpaid July 2015 Rent	1,350.00
Unpaid August 2015 Rent (½ month)	675.00
Less Security Deposit	-675.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,750.00</b>

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlords' application for an Order of Possession is withdrawn.

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: August 31, 2015

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Residential Tenancy Branch

