



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on August 14, 2015 seeking an Order of Possession for Landlord's use of the property and to obtain a Monetary Order for unpaid rent or utilities and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of either Tenant. The Landlord provided affirmed testimony that each Tenant was served notice of this application and this hearing by registered mail on August 14, 2015.

Section 90 of the *Act* provides that a document given or served in accordance with section 89 of the *Act*, if given or served by mail, is deemed to be received on the 5th day after it is mailed.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the above, I find that each Tenant was deemed served notice of this hearing and the Landlord's application as of August 19, 2015, pursuant to sections 89 and 90 of the *Act*. Therefore, I proceeded in absence of the Tenants.

### Issue(s) to be Decided

1. Has the Landlord regained possession of the rental unit?
2. Has the Landlord proven entitlement to a Monetary Order?

### Background and Evidence

The Landlord testified that at the time he purchased the property in September 2014 the Tenants had been occupying the rental unit based on a verbal tenancy agreement they

had with the former owner. Rent was payable on the first of each month in the amount of \$1,550.00 and there was no record of a security deposit being paid.

On June 30, 2015 the Landlord served the Tenants with a 2 Month Notice to end tenancy listing an effective date of August 31, 2015.

The Tenants vacated the property on or before August 31, 2015, in accordance with the 2 Month Notice. The Landlord regained full possession of the unit on that date and stated that he wished to withdraw his request for an Order of Possession.

The Tenants did not pay rent for July 1, 2015 or August 2015. The Landlord submitted that the one month compensation for issuing the 2 Month Notice would be applied to the August 2015 rent which left a balance owed to him for July rent of \$1,550.00.

### Analysis

The *Residential Tenancy Act* (the *Act*) stipulates provisions relating to these matters as follows:

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The undisputed evidence was the Tenants failed to pay their July 1, 2015 rent which is in breach of section 26 of the *Act*. Accordingly, I grant the Landlord's application and award them unpaid rent for July 2015 in the amount of **\$1,550.00**, pursuant to sections 7 and 67 of the *Act*.

The Tenants did not pay rent for August 2015 which was attributed to their one month compensation as per section 51(1) of the *Act*.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

### Conclusion

The Landlord withdrew their request for an Order of Possession and was successful with their application for monetary compensation for July 2015 unpaid rent of \$1,550.00 plus their \$50.00 filing fee.

The Landlord has been issued a Monetary Order in the amount of **\$1,600.00** (\$1,550.00 + \$50.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with 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: September 18, 2015

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Residential Tenancy Branch

