



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD

### Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution dated March 18, 2016 (the "Application"). The Landlord seeks a monetary order for unpaid and lost rent, and an order of possession.

Only the Landlord's agent, D.L., appeared at the hearing. D.L. provided her solemn affirmation and was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

D.L. gave evidence the Tenants were personally served with the Notice of a Dispute Resolution Hearing (the "Notice") 10 days after the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was attached to the Tenant's door. She advised that she witnessed her partner, B.L., deliver the documents to both Tenants in person at the rental unit. I find the Tenants were duly served with the Notice on March 23, 2016.

I have considered all oral and documentary evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

D.L. advised the Tenants vacated the rental unit at the end of March. Accordingly, the request for an order of possession was withdrawn.

In addition, the Landlord's agent, D.L., filed the Notice on behalf of the Landlord. Based on D.L.'s financial circumstances, the Landlord was granted a waiver of the \$100.00 filing fee. D.L. was informed this is an inappropriate practice and the Landlord is

cautioned to avoid this practice in the future. D.L. agreed to convey this warning to the Landlord.

### Issue to be Decided

Is the Landlord entitled to a monetary order for unpaid and lost rent?

### Background and Evidence

D.L. testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 12, 2016 (the "10 Day Notice"), was served on March 13, 2013 by attaching a copy to the door of the Tenant's rental unit. Although not in evidence, D.L. also advised she took photographs of the 10 Day Notice attached to the door.

Pursuant to section 90 of the Act, documents served in this way are deemed to have been received three days later. I find the Tenants were duly served with the 10 Day Notice on March 16, 2016.

Based on the unchallenged evidence of D.L., I find that a month-to-month tenancy commenced between the Landlord and the Tenants in or about 2013. At all material times, rent in the amount of \$875.00 per month was payable on the first of each month. The Tenants paid a security deposit of one half the monthly rent, or \$437.50, at the beginning of the tenancy.

Documentary and oral evidence submitted in evidence summarizes the rent arrears dating back to December 2014. The total, including lost rent for April 2016, is \$5,855.00.

### Analysis

Under section 26 of the Act, a tenant must not withhold rent, even if the landlord is in breach of the tenancy agreement or the Act, unless the tenant has some authority under the Act to not pay rent. The Tenants did not attend the hearing, although duly served with the Notice. As a result, I have heard no evidence the Tenants had authority to withhold rent under the Act.

Based on the affirmed testimony of D.L., and the documentary evidence submitted, and on a balance of probabilities, I find that the Landlord has established a total monetary claim of \$5,855.00 for unpaid and lost rent from December 1, 2014 to April 30, 2016.

I order that the Landlord retain the security deposit of \$437.50 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$5,417.50.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant vacated the rental unit and therefore an order of possession was not required. I find the Landlord is entitled to a monetary order for rent owed, and may retain the security deposit in partial satisfaction of the claim. Accordingly, the Landlord is granted a monetary order in the amount of **\$5,417.50**.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 22, 2016

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Residential Tenancy Branch