



# 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 in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants' security and pet deposit; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on May 19, 2016. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord permitted to keep the security and pet deposit?

### Background and Evidence

The landlord testified that this fixed term tenancy started on March 01, 2016 and was due to end on May 31, 2017. Rent for this unit was \$1,600.00 per month and was due on the 1st of each month. The tenants paid a security deposit of \$800.00 and a pet deposit of \$800.00 at the start of the tenancy. A copy of the tenancy agreement has been provided in documentary evidence.

The landlord testified that the tenants failed to pay rent for May, 2016 leaving an unpaid balance of \$1,600.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on May 03, 2016 and the Notice was served in person to the tenants on that date. The Notice states the tenants owed \$1,600.00 that was due on May 01, 2016. The Notice informed the tenants that they had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on May 11, 2016. The landlord testified that the tenants did not pay the outstanding rent and have also failed to pay rent for June, 2016 of \$1,600.00. The tenants vacated the rental unit on June 03, 2016.

The landlord testified that since the tenants vacated the rental unit the landlord has placed an advertisement to attempt to re-rent the unit or the unit will be sold. The landlord testified that she had to spend a week getting the unit ready for viewings due to the condition the tenants left the unit in. To date the unit has had two viewings with prospective tenants but remains un-rented.

The landlord seeks a Monetary Order to recover unpaid for May and June of \$3,200.00 and the filing fee of \$100.00. The landlord also seeks an Order to be permitted to keep the security deposit of \$800.00 and the pet deposit of \$800.00 to apply to the outstanding rent.

### Analysis

I have carefully considered the undisputed evidence before me; I refer the parties to s. 26 of the *Act* which states:

*26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, I am satisfied from the undisputed evidence that the tenants have failed to pay rent for May, 2016 to an amount of **\$1,600.00**. The landlord is entitled to recover these rent arrears.

With regard to the unpaid rent for June, This is a fixed term tenancy and as such the tenants are responsible for the rent to the end of the tenancy or up to a time the unit can be re-rented. The tenants vacated the rental unit on June 03, 2016; however, the landlord is entitled to recover the rent for the entire month of June as the landlord was unable to re-rent the unit despite placing an advertisement for the unit. The landlord is therefore entitled to recover the amount of **\$1,600.00**.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

I Order the landlord to keep the security and pet deposit to a total amount of \$1,600.00 pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the unpaid rent. The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Unpaid rent for May and June	\$3,200.00
Filing fee	\$100.00
Less security and pet deposits	(-\$1,600.00)
Total amount due to the landlord	\$1,700.00

### Conclusion

For the reasons set out above, I grant the landlord a Monetary Order in the amount of **\$1,700.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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: June 21, 2016

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Residential Tenancy Branch