



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for an Order of Possession for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord 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 landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants attended. The landlord testified that each of the tenants was served individually by registered mail with the Landlord's Application for Dispute Resolution and notice of this hearing, along with the evidentiary material, on June 23, 2016. The landlord also provided tracking numbers assigned by Canada Post, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on October 1, 2015. Rent in the amount of \$1,600.00 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 in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is the main floor of a house, and the landlord uses the unfinished lower level for storage, and the landlord also resides on the property.

The tenants failed to pay utilities when due, and the landlord gave the tenants a written demand for payment of \$480.00 on May 1, 2016 for hydro. A copy of the notice has been provided. The tenants have also been provided with copies of the bills.

The tenants also failed to pay rent for the month of June, and on June 6, 2016 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by handing it to one of the named tenants. A copy has been provided and it is dated June 6, 2016 and contains an effective date of vacancy of June 16, 2016 for \$1,600.00 unpaid rent that was due on June 1, 2016 and \$480.00 unpaid utilities following a written demand on May 1, 2016. The tenants have not disputed the notice, however the day after the notice was served one of the tenants paid the landlord \$800.00 stating that he didn't trust the landlord to return the security deposit so he was only paying half the rent. No other rent has been paid, and the tenants owe \$800.00 for June and \$1,600.00 for July, 2016. The landlord is not certain if the tenants have moved out of the rental unit; they haven't been seen for several weeks, but no notice has been given by them to vacate, the keys have not been returned, and items belonging to the tenants are still there.

Also on June 6, 2016 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause by handing it to one of the tenants at the same time as the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy has been provided, however it is not a readable copy. The landlord testified that it is dated June 6, 2016 and contains an effective date of vacancy of July 6, 2016. The reasons for issuing it are:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant has engaged in illegal activity that has or is likely to:
  - damage the landlord's property;

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
- Tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The tenants have never paid rent on time, usually on the 6<sup>th</sup>, 7<sup>th</sup> or 8<sup>th</sup> of the month. Half of the rent for June was paid on June 7, 2016, the day after the notices to end the tenancy were served. The landlord's realtor and the landlord are fearful of the tenant's aggressive behavior, and the tenant told the landlord that he sells marihuana for a living. There were also 3 people living in the rental unit for a month and the landlord had no idea who they were. The landlord continually asked, but the tenant only swore at the landlord.

The landlord further testified that there is a lot of damage in the rental unit, for which the landlord does not yet have costs or know the full extent, however the landlord does not believe that the rental unit will be rentable for August, 2016.

The landlord seeks an Order of Possession, a monetary order for unpaid utilities in the amount of \$480.00; unpaid rent for June and July, 2016 totaling \$2,400.00; loss of rental revenue for August, 2016 in the amount of \$1,600.00 and recovery of the \$100.00 filing fee.

### Analysis

The *Residential Tenancy Act* states that a tenant has 5 days from the date of service to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by filing and serving the landlord with an application for dispute resolution, or to pay the rent in full within that 5 day period. If the tenant does neither, the tenant is conclusively presumed to have accepted the tenancy.

The *Act* also states that a tenant has 10 days from the date of service to dispute a 1 Month Notice to End Tenancy for Cause by filing and serving the landlord with an application for dispute resolution. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the tenancy.

In this case, the landlord testified that the tenants have not served the landlord with an application for dispute resolution, and I have no such application before me. I have reviewed both notices and I find that they are in the approved form and contain information required by the *Act*, and I find that the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and rent remains outstanding, I grant the Order of Possession on 2 days notice to the tenants.

With respect to the landlord's monetary claim for unpaid rent and utilities, in the absence of any evidence to the contrary, I accept the landlord's testimony and I find that the tenants owe \$480.00 for outstanding utilities and \$800.00 for June's rent and \$1,600.00 for July's rent.

With respect to the landlord's claim for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, the landlord testified that the tenants have damaged the rental unit to such an extent that it won't be rentable for August, 2016. The landlord does not yet have possession of the rental unit, and I find that an application for loss of rental income for August, 2016 to be premature, and I dismiss it with leave to reapply.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$600.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord for the difference in the amount of \$2,380.00.

### Conclusion

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

I further order the landlord to keep the \$600.00 security deposit, and I grant a monetary order in favour of the landlord as against the tenants, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,380.00.

This order is 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: July 28, 2016

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Residential Tenancy Branch