



# 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 pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:14 am in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 am. Landlord DD ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord testified that the tenants were personally served with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on June 6, 2016 and that the tenants were personally served with the landlord's Application for Dispute Resolution ("ADR") on June 23, 2016. Based on the testimony of the landlord and the evidence submitted, I find that the tenants were sufficiently served with the 10 Day Notice on June 6, 2016 and the landlord's ADR on June 23, 2016 in accordance with the requirements at section 88, 89 and 90 of the Act.

The landlord testified that the tenants vacated the rental unit the evening prior to this hearing (June 27, 2016). Therefore, he withdrew his application for an Order of Possession. The landlord also withdrew his application to recover the filing fee for this application.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount of \$425.00 in outstanding rent? Is the landlord entitled to retain the tenants' security deposit towards any monetary award?

### Background and Evidence

This tenancy began on March 1, 2011 with a rental amount of \$850.00 payable on the first of each month. The landlord submitted a copy of the residential tenancy agreement. The landlord testified that he continues to hold the \$425.00 security deposit paid by the tenants at the outset of this tenancy.

The landlord testified that the tenants have begun to repeatedly pay their rent late. The landlord submitted a copy of a 10 Day Notice issued to the tenants in May, testifying that the tenants did not pay rent in May on the first of the month or on the fifth day after issuance of the 10 Day Notice. He testified that the tenants did pay May 2016 rent. The landlord submitted a copy of another 10 Day Notice issued to the tenants in June. The landlord testified that the tenants did not pay June 2016 rent as required on the first of the month or on the fifth day after the issuance of the 10 Day Notice. The landlord testified that, after the issuance of the 10 Day Notice on June 6, 2016, the tenants paid landlord June 2016 outstanding rent. The landlord testified that, with their payment on June 20, 2016, the landlord provided to the tenants a receipt stating "for use and occupancy only" indicating that the landlords did not intend to reinstate the tenancy.

The landlord testified that the tenants did not pay rent on July 1, 2016. The landlord testified that the tenants paid \$425.00 (1/2 of their monthly rent) on July 27, 2016 and were issued a receipt that indicated it was for "use and occupancy only". The landlord originally applied for an Order of Possession but testified that the tenants vacated the rental unit on July 27, 2016. Therefore, the landlord withdrew his application for an Order of Possession and sought to recover the outstanding \$425.00 in rental arrears owed by the tenants.

### Analysis

The tenants failed to pay the June 2016 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by June 16, 2016. The landlord testified that the tenants vacated the rental unit on July 27, 2016 but that an outstanding \$425.00 of rent remains unpaid.

I find that the landlord is entitled to the amount unpaid rent from July 2016 totalling \$425.00. I accept the uncontested evidence offered by the landlord that the tenants have made attempts to pay their rent but that \$425.00 remains unpaid. The landlord has provided sufficient evidence to prove that this amount of rent is outstanding and that the tenants are responsible to pay this amount.

The landlord testified that he continues to hold a security deposit of \$425.00 from March 1, 2011 to the date of this decision for this tenancy. In accordance with section 72 of the Act, I will allow the landlord to retain the security deposit *plus any interest* in partial satisfaction of the monetary award. [There is no interest payable for this period].

The landlord withdrew his claim to recover the filing fee for this application.

### Conclusion

I allow the landlord to retain the tenants' security deposit of \$425.00 to satisfy the \$425.00 in outstanding rent owed by the tenants.

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 2, 2016

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Residential Tenancy Branch

