



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for non-payment of rent and for a breach of a material term of the tenancy pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 their filing fee for this application from the tenant pursuant to section 72.

The landlords attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlords stated that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on July 5 and July 15, 2016. The landlords have submitted in support of this claim copies of the Canada Post Customer Receipt Tracking numbers. I accept the undisputed evidence of the landlords and find that the tenants were properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The tenants are deemed served 5 days later as per section 90 of the Act on July 10, 2016.

At the outset the landlords clarified that the tenants had vacated the rental unit on July 22, 2016 and as such no longer require an order of possession. No further action is required for possession of the rental unit.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on March 15, 2014 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated March 15, 2014. The monthly rent is \$740.00 payable on the 15<sup>th</sup> day of each month and a security deposit of \$370.00 was paid on March 14, 2014.

The landlord also seeks a monetary order for unpaid rent and for money owed or compensation for damage or loss of \$2,200.00. During the hearing the landlord clarified that the monetary claim is being lowered to \$1,480.00 for unpaid rent for June 2016 (\$740.00) and July 2016 (\$740.00).

The landlords provided affirmed testimony that the tenants were served with the 10 Day Notice to End Tenancy (the 10 Day Notice) dated June 16, 2016 by posting it to the rental unit door on June 16, 2016. The 10 Day Notice sets out that the tenants failed to pay rent of \$740.00 that was due on June 15, 2016 and that there was an effective end of tenancy date listed as June 27, 2016. The landlords provided a copy of a completed proof of service document which shows that a witness observed the service in this manner as stated. The landlords stated that since the 10 Day Notice was served no rent was paid by the tenants as of the date of this hearing.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice.

I accept the undisputed affirmed evidence of the landlords and find that the tenants failed to pay rent for June 2016 and July 2016 totalling \$1,480.00. As such, I find that the landlords have established a claim for unpaid rent of \$1,480.00.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the \$370.00 security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,210.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid June 2016 Rent	\$740.00
Unpaid July 2016 Rent	740.00
Offset Security Deposit	-370.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$1,210.00</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: August 12, 2016

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Residential Tenancy Branch