



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      OPR, MNR, MNSD, FF, CNR, O

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied 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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence filed by the other party. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I find that both parties have been properly served and deemed as such pursuant to section 90 of the Act.

At the outset, both parties agreed that the tenants had been making rental payments after the 10 Day Notice was served and that the current rental arrears totalled, \$1,650.00.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?  
Is the landlord entitled to retain all or part of the security deposit?  
Are the tenants entitled to an order cancelling the 10 Day Notice?  
Are the tenants entitled to an order for the landlord to comply with the Act, regulations or tenancy agreement?

### 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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties agreed that there was a signed tenancy agreement dated January 23, 2016 in which the tenancy began on February 1, 2016 on a fixed term tenancy ending on February 1, 2017. The monthly rent is \$1,875.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$1,000.00 was paid on January 23, 2016.

Both parties agreed that the landlord served the tenants with the 10 Day Notice dated July 4, 2016 in person on July 4, 2016. Both parties agreed that the 10 Day Notice sets out that the tenants failed to pay rent of \$2,950.00 that was due on July 1, 2016. Both parties confirmed that rent owed was for \$1,075.00 for April 2016 and \$1,875.00 for July 2016. Both parties agreed that the tenants failed to pay the owed within the allowed 5 day time frame and that the tenants had applied for dispute of the 10 Day Notice.

The tenants claimed that the landlord accepted multiple late rent payments bringing the owed amount from \$2,950.00 down to \$1,650.00 currently. The landlord confirmed the multiple rent payments. The tenants stated that they understood that if they kept making payments for the rental arrears that they could continue the tenancy. The landlord disputed this claim stating that no agreement was made with the tenants.

### 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.

I find based upon the undisputed affirmed evidence of both parties that the landlord did properly serve the tenants with the 10 Day Notice dated July 4, 2016. Both parties confirmed that the tenants had failed to pay rent as claimed on the notice and that the tenants were in rental arrears currently of \$1,650.00 as of the date of this hearing. On this basis, I find that the landlord has established a claim for unpaid rent of \$1,650.00.

As for the landlord's application for an order of possession, I find that the landlord has failed. The tenants have claimed that the landlord reinstated the tenancy by continuing to accept late payment of rent after the 10 Day Notice was served. The tenants stated that it was their understanding that by continuing to pay the rental arrears that the landlord would continue their tenancy. The landlord confirmed in her direct testimony that the tenants continued to make multiple rent payments for the arrears, but had disputed that an agreement was made to continue the tenancy. I find that the landlord failed to provide notice to the tenants that by accepting the late rental payment that the landlord would still be seeking an end to the tenancy. As such, the landlord failed to provide notice to the tenants that rent was being accepted only for "use and occupancy" instead of reinstating the tenancy. The landlord's application for an order of possession is dismissed.

As both parties have been somewhat successful in their applications for dispute, I decline to make any orders regarding recovery of the filing fee.

As the tenancy continues, I decline to make any order regarding the security deposit.

#### Conclusion

The landlord's application for an order of possession is dismissed without leave to reapply. The landlord is granted a monetary order for unpaid rent of \$1,650.00. The landlord must serve the tenants with the monetary order. Should the tenants fail to comply with the order, the landlord may file this order in the Small Claims Division of the Provincial Court and enforce it as an order 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: September 01, 2016

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Residential Tenancy Branch