



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR FF

### Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following in the details of the dispute:

*I am looking for my rent and utilities be paid.*

[Reproduced as written]

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for rent and utilities. It is reasonable to conclude that request for all rents and utilities for the period the Tenants remained occupying the rental unit. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on November September 21, 2016. The Landlord filed seeking an Order of Possession and a Monetary Order as described above.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenant. The Landlord provided affirmed testimony that the Tenants were served notice of this application and this hearing in person on September 26, 2016 after 5:00 p.m., in the presence of a witness, her daughter.

Section 89 of the *Act* provides that an application for Dispute Resolution may be served personally upon the respondent(s). As such I accepted the Landlord's affirmed testimony and found the Tenants were sufficient served notice of this application and proceeding. Accordingly, I continued to hear the Landlord's undisputed evidence, in absence of the Tenants.

Issue(s) to be Decided

- 1) Has the Landlord proven entitlement to an Order of Possession for unpaid rent or utilities?
- 2) Has the Landlord proven entitlement to a monetary order for unpaid rent and utilities?

Background and Evidence

The Landlord submitted evidence that the parties executed a written month to month tenancy agreement that commenced on April 15, 2015. The rent of \$1,500.00 was payable on the first of each month. The tenancy agreement indicates the Tenants were required to pay \$750.00 as the security deposit and \$200.0 as the pet deposit.

The Landlord testified that when the Tenants failed to pay their September 1, 2016 rent a 10 Day Notice was personally served upon them on September 10, 2016, in the presence of her witness. That Notice was dated September 9, 2016 listing an effective date of September 21, 2016, unpaid rent of \$1,500.00 and unpaid utilities of \$185.28.

The Landlord stated that no payments have been received towards rent for September, October, or November 2016 rents. In addition, no payments have been received towards utilities. The Landlord submitted copies of utility bills and stated the text messages submitted into evidence where her written demands for utility payments. Those text messages were all dated prior to the issuance of the 10 Day Notice.

The Landlord stated that she wished to proceed with her request for an Order of Possession a Monetary Order for all outstanding rent (3 x \$1,500.00) and utilities.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accepted the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or

their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants received the 10 Day Notice on September 10, 2016 and the effective date of the Notice would have corrected to **September 20, 2016**, pursuant to section 53 of the Act.

The Tenants neither paid the rent nor disputed the Notice within the required timeframes; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **September 20, 2016**. Accordingly, I grant the Landlord's request and issue them an Order of Possession **effective 2 Days upon service to the Tenants**. In the event the Tenants do not comply with this Order it may be enforced through Supreme Court.

Section 26 of the Act stipulates, in part, that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The undisputed evidence was the Tenants have not paid the \$1,500.00 rent or the \$185.28 utilities required that were payable on September 1, 2016 and July 1, 2016 respectively, in accordance with sections 7 and 26 of the Act. As per the aforementioned, I find the Landlords have met the burden of proof and I award them unpaid rent for September 2016 and utilities, in the amount of **\$1685.28**.

As noted above, this tenancy ended **September 20, 2016**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy and loss of rent of the rental unit for October and November 2016, not rent. I approve the Landlords' request given the delay from the time the Landlord filed their application on September 21, 2016 to the November 18, 2016 hearing date. I grant the request, in part, as it is reasonable to conclude that the Tenants would be expected to pay for their occupation of the rental unit until such time as the Landlord regained possession.

The Tenants continue to occupy the rental unit and the Landlord will not regain possession of the rental unit until after service of the Order of Possession. Once the Landlord regains possession they are required to mitigate there losses by trying to re-rent the unit for as soon as possible, pursuant to section 7(2) of the Act, as listed above. Therefore, I conclude the Landlord is entitled to payment for use and occupancy and

any loss of rent for the period of October 1, 2016 to November 30, 2016 in the amount of **\$3,000.00** (2 x \$1,500.00).

There was insufficient evidence to prove the Tenants were served a demand letter for payment of utility bills submitted into evidence that were dated after the issuance of the 10 Day Notice. Therefore, I dismiss the request to amend the application for those utility costs, with leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has been successful with their application; therefore I award recovery of the **\$100.00** filing fee

The Landlord has been issued a Monetary Order in the amount of **\$4,785.28** (\$1,685.28 + \$3,000.00 + \$100.00). This Order must be served upon the Tenants and may be enforced through Small Claims Court.

### Conclusion

The Landlord was successful with their application and was awarded an Order of Possession effective 2 days upon service and a Monetary Order in the amount of **\$4,785.28**.

This decision is final, legally binding, and 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: November 18, 2016

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Residential Tenancy Branch