



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, 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 unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' 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 tenants, pursuant to section 72.

The tenants did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlord's agent (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that on December 12, 2016 he forwarded the landlord's application for dispute resolution hearing package via registered mail to the tenants. The landlord provided a Canada Post tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application and supporting documents on December 17, 2016, the fifth day after its registered mailing.

### 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, money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to a monetary order to keep all or part of the security deposit?

Is the landlord authorized to recover the filing fee for this application from the tenants?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on June 1, 2016 on a fixed term. Rent in the amount of \$900.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$450.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

Two separate 10 Day Notices to End Tenancy for Unpaid Rent ("10 Day Notice") were personally served to the tenants on December 3, 2016. The first 10 Day Notice is in relation to unpaid rent in the amount of \$400.00 for October 2016. The second 10 Day Notice was issued for unpaid December rent in the amount of \$900.00. Both 10 Day Notices indicate an effective move-out date of December 17, 2016. The landlord provided a signed, witness proof of service. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notices on December 3, 2016, the day they were served.

The landlord seeks a monetary order of \$2,300.00 for October 2016, December 2016 and January 2017 rent. The landlord claimed that the tenant paid a total of \$400.00 in rent for the above three months.

The landlord testified that he has not accessed the rental unit to determine the extent of the damages and therefore is uncertain of the monetary amount. The landlord provided an estimate in the amount of \$125.00 for anticipated cleaning.

The landlord is seeking a \$25.00 late fee for each month of unpaid rent in the total amount of \$75.00.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is

conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notices before me, I find that the tenants were served with effective notices. As the tenants did not pay the overdue rent or file an application to dispute the notices, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notices, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$900.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent for October 2016, December 2016 and January 2017. Therefore, I find that the landlord is entitled to \$2,300.00 in rent.

I find the landlord's claim to damages premature as the tenants have not vacated the rental unit and the landlord cannot specify an amount. For this reason I dismiss the landlord's application for damages with leave to reapply. In relation to the landlord's claim for cleaning costs, I find this too is premature as this work has not been completed. This portion of the landlord's claim has been dismissed with leave to reapply.

Section 7 of the *Regulation* establishes that a landlord may charge an administration fee of \$25.00 for late payment of rent if the tenancy agreement provides for that fee. Based on the tenancy agreement before me, I find the tenants are responsible for a \$25.00 fee for each month of late rent and therefore award the landlord \$75.00 for late fees.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$2,475.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$450.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$2,025.00.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant.**

I issue a monetary order in the landlord's favour in the amount of \$2,025.00 against the tenants.

The landlord's claims for damages including cleaning are dismissed with leave to reapply.

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: January 13, 2017

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Residential Tenancy Branch