



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession and a monetary order for unpaid rent or utilities; an Order of Possession for breach of an agreement; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

One of the landlords attended the hearing, gave affirmed testimony and represented the other landlord. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants attended the call. The landlord testified that each of the tenants was served with the Landlord's Application for Dispute Resolution, evidence and notice of this hearing by registered mail on December 23, 2016. The landlords have provided 2 photographs of registered mail addressed to each of the tenants both bearing that date as well as a Canada Post cash register receipt and I am satisfied that each of the tenants has been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing, the landlord advised that the Landlord's Application for Dispute Resolution contains an incorrect spelling of one of the tenant's name, and I amended the application to show the correct spelling as contained in 2 tenancy agreements provided as evidence for this hearing. The frontal page of this Decision reflects the corrected spelling.

### Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities or for breach of an agreement?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?

- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this fixed term tenancy began on May 19, 2015. Two tenancy agreements have been provided which are signed by a landlord and by 2 tenants. The first is for a tenancy to begin on June 1, 2015 expiring on June 1, 2016 at which time the tenants were required to vacate the rental unit. The landlord testified that the tenants moved in early and were charged a pro-rated amount for May, 2015. The parties entered into a second tenancy agreement for a tenancy to begin on June 1, 2016 and to expire on May 31, 2017 at which time the tenants are to vacate the rental unit. Both tenancy agreements specify that rent in the amount of \$1,200.00 per month is payable on the 1<sup>st</sup> day of each month. The landlord does not believe the female tenant still resides in the rental unit, but the male tenant still resides there.

At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$600.00 which is still held in trust by the landlords and no pet damage deposit was collected.

The tenants failed to pay rent in December, 2016 and the landlords caused the tenants to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated December 6, 2016 and contains an effective date of vacancy of December 16, 2016 for unpaid rent in the amount of \$1,200.00 that was due on December 1, 2016. A Proof of Service document has also been provided stating that it was served on December 6, 2016 by posting it to the door of the rental unit and is signed by the person who served it and a witness.

The tenants have not paid any rent since November, 2016 and have not served the landlords with an application for dispute resolution disputing the notice.

The tenants are in arrears of rent the sum of \$1,200.00 for December, 2016 and \$1,200.00 for January, 2017.

### Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice by filing an application for dispute resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. Also, if served by posting it to the door of the rental unit, the document is not deemed

served until 3 days after posting, which changes the effective date of vacancy in this case to December 19, 2016. I accept the undisputed testimony of the landlord that the tenants have not paid the rent, have not served the landlord with an application for dispute resolution, and I have no such application before me. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlords are entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenants.

I also accept the undisputed testimony of the landlord that the tenants are in arrears of rent \$1,200.00 for each of the months of December, 2016 and January, 2017. Therefore, I order the landlords to keep the \$600.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords as against the tenants for the difference in the amount of \$1,800.00.

Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenants.

I further order the landlords to keep the \$600.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,900.00.

This order is final and binding and may be enforced.

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 19, 2017

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Residential Tenancy Branch