



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants

The landlords attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served by registered mail sent on January 10, 2017, Canada post tracking numbers were provided as evidence of service, the tenants did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

The landlord gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issues to be Decided

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

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

Based on the testimony of the landlord, I find that the tenants were served with a notice to end tenancy for non-payment of rent on December 29, 2016, by posting to the door of the rental unit. A third party witnessed this. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

The landlord stated that the tenants did not pay the rent due on December 23, 2016 and has not paid any subsequent rent for January 23 2017. The landlord seeks to recover the amount of unpaid rent in the amount of \$3,600.00.

The landlord stated the tenants have failed to pay their portion of the gas, hydro and garbage. The landlord stated the tenant currently owe the amount of \$179.00 for gas, the amount of \$247.00 for hydro and the amount of \$64.00 for garbage. The landlord seeks to recover the amount of unpaid utilities in the amount of \$490.00.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenants have not paid the outstanding rent and did not apply to dispute the notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of **\$4,190.00** comprised of unpaid rent for December 2016, unpaid rent for January 2017, for unpaid utilities for December 2016, January 2017 and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$900.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$3,290.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The tenants failed to pay rent and did not file to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 30, 2017

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Residential Tenancy Branch