



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

OPC MNR

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for cause pursuant to section 55, and a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant's son, RD ('tenant'), testified on behalf of the tenant in this hearing, and was given full authority to do so.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Applications and evidence.

### Issues

Are the landlords entitled to an Order of Possession for cause?

Are the landlords entitled to a monetary award for unpaid rent?

### Background and Evidence

The landlords provided a copy of the written tenancy agreement as part of their application. This month-to-month tenancy began on December 1, 2013 with monthly rent in the amount of \$1,300.00 payable on the first day of the month. The landlords had collected a security and pet damage deposit (the deposits) in the amounts of \$600.00 each, and still retain these deposits. The tenant is still currently residing at the rental suite.

The landlord attending this hearing (the landlord) testified to the following during the hearing. The landlords are seeking an Order of Possession pursuant to a 1 Month Notice to End Tenancy for Cause ('1 Month Notice'), for repeated late payments of rent. No copy of this notice was provided for this hearing, although the landlords testified that a copy was personally served to an adult at the rental suite. At that time the landlords had discovered his tenant was subletting the rental suite.

The landlord testified that the tenant was late paying rent every month, at least three times, and several 10 Day Notices to End Tenancy ('10 Day Notice') were issued to the tenant for late payment of rent. Copies of these 10 Day Notices were provided as part of the landlords'

evidence. The landlord testified that rent was paid through etransfer, and that rent was always late and never paid in full.

The landlord could not recall the date of the 1 Month Notice, nor could they provide an effective date. The date of service was estimated to be around December 3, 2016. The landlord did indicate that the tenant did do some work for the landlord in lieu of paying rent, but the tenant still owed rent and utilities. The landlords did not provide any utility statements, but they did indicate that the power was cut off for nonpayment. They are seeking \$1,310.00 for the unpaid utilities bill. The landlords provided proof of payment of rent in their evidence package, indicating that they are still owed rent for the months of December 2016 and January 2017. The landlords are seeking to obtain a monetary order for unpaid rent for the months of December 2016 and January 2017 totalling \$2,400 minus the \$200.00 paid on December 8, 2016, plus \$1,310.00 in unpaid utilities.

The tenant testified that he was never served a copy of the 1 Month Notice by the landlords, but that he did find a copy of the notice on top of the fridge "weeks later". The tenant testified that the utilities bill had skyrocketed, and that it should only be \$400.00. The tenant did not dispute the fact that he owed money for rent, and or the fact that he was late paying it. The tenant provided the following explanations for the late payment of rent. The tenant was on a pension, and could only transfer \$1,000.00 per day through his bank. The tenant says he was working, but had yet to be paid, and he admitted to owing \$1,800.00 in rent plus the \$1,305.00 for utilities.

The tenant testified that the other occupants in the rental suite were his girlfriend and her son, and that he was away working at work camps. The tenant further testified that the utilities bill had skyrocketed due to a bad roof. The tenant testified that he was unsure how much rent was outstanding as his girlfriend's son was responsible for paying \$1,000.00 a month, although he was known to be unreliable.

### Analysis

Subsection 47(1)(b) of the *Act* sets out that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

**52** *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*

*(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*

*(e) when given by a landlord, be in the approved form...*

The landlords were unable to verify the date of the 1 Month Notice, nor were they able to state the effective date of the notice. A copy of this 1 Month Notice was not provided as part of the landlords' application and evidence. As there is no way of verifying whether the 1 Month Notice complies with section 52 of the *Act*, and as the tenant disputes the service of the 1 Month Notice, I dismiss the landlords' application for an Order of Possession pursuant to this 1 Month Notice.

**Section 26** of the *Act*, in part, states as follows:

**Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The landlords provided undisputed testimony at this hearing that the tenant did not pay his outstanding rent. The tenant acknowledged that he failed to pay rent in the amount of \$1,800.00 plus \$1,305.00 in utilities. The landlords testified that the tenant owed \$2,200.00 plus \$1,310.00 in utilities.

I find that the tenant did not pay outstanding rent as per Section 26 (1) of the *Act*, nor did he have the right to deduct all or a portion of this rent. As the landlords submitted detailed evidence to support the outstanding rent as part of their application, and as the tenant testified that he was not able to verify how much rent he still owed, I accept the landlord's testimony that the tenant owes \$2,200.00 in rent plus \$1,310.00 in utilities. Accordingly I allow the landlord's application for a monetary order in the amount of \$3,510.00.

The landlords continue to hold the tenant's deposits in the amount of \$600.00 each. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's deposits of \$1,200.00 plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

**Conclusion**

The landlords' application for an Order of Possession is dismissed. The 1 Month Notice referred to in this decision is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a \$2,310.00 monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent and utilities, and also allows the landlords to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for December 2016	\$1,000.00
Unpaid Rent for January 2017	1,200.00
Unpaid Utilities	1,310.00
Less Security Deposit	-1,200.00
<b>Total Monetary Order</b>	<b>\$2,310.00</b>

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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: February 3, 2017

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**Residential Tenancy Branch**