



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, 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 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the tenants confirmed that they had received the landlord's application and evidence. As the tenants did not raise any issues regarding service of the application or the evidence, I find that the tenants were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### 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?

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

### Background and Evidence

The parties testified that the landlord assumed this tenancy in January 2017, when the landlord purchased the property from the previous landlord. The landlord received a tenancy agreement from the previous owner and submitted it as part of his documentary evidence. As per the submitted tenancy agreement and testimony of the parties, the tenancy began on November 1, 2015 on a fixed term until October 31, 2016 at which time the tenancy continued on a month-to-month basis. Rent in the amount of

\$1,200.00 is payable on the first of each month. A security deposit of \$600.00 was paid by the tenants and the landlord assumed this deposit from the former landlord. The tenants continue to reside in the rental unit.

The tenants confirm receipt of the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on February 3, 2017. The 10 Day Notice is dated February 2, 2017 and indicates an effective move-out-date of February 11, 2017.

The landlord seeks a monetary order of \$1,200.00 for unpaid rent for the month of February 2017. The landlord claims that the tenants have not paid February rent.

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

In reply, the tenants contend that they sent an e-transfer of \$1,000.00 on February 8, 2017 but after learning the landlord planned to issue a receipt of occupancy only and pursue the 10 Day Notice, the tenants cancelled the e-transfer. The tenant's acknowledged that they have not paid February rent.

### 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 notice before me, I find that the tenants were served with an effective notice. As the tenants did not pay the overdue rent or file an application to dispute the notice within five days, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, 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 \$1,200.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent for February 2017. Therefore, I find that the landlord is entitled to \$1,200.00 in rent.

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 \$1,300.00

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 \$600.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$700.00

### Conclusion

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

I issue a monetary order in the landlord's favour in the amount of \$700.00.

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: March 13, 2017

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Residential Tenancy Branch