



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPR, MNDC, MNSD, FF

### Introduction

On March 2, 2017, the Landlords submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord N.D. attended the teleconference hearing; however, the Tenants did not. The Landlord provided affirmed testimony that he attended the rental unit and served the Tenants daughter with the Notice of Hearing on March 2, 2017.

I find that the Tenants have been duly served with the Notice of Hearing in accordance with sections 89 and 90 of the Act.

The Landlord was provided the opportunity to present his 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 due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord testified that the tenancy began in August 2016, as a month to month tenancy. Rent in the amount of \$1,350.00 is to be paid on the first day of each month. The Tenant paid the Landlord a security deposit of \$750.00. The Landlord testified that there is no written tenancy agreement.

The Landlord testified that the Tenants did not pay all the rent owing under the tenancy agreement for the months of December 2016, January 2017, and February 2017.

The Landlord testified that he served the Tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 22, 2017, ("the Notice") on February 22, 2017. The Landlord testified that the Tenants were served with the Notice in person.

The Notice states that the Tenants have failed to pay rent in the amount of \$2,350.00 which was due on February 1, 2017. The Notice also states that Tenants have failed to pay utilities in the amount of \$503.58 after written demand on February 22, 2017.

The Notice informed the Tenants that the Notice would be cancelled if the rent and utilities was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

There is no evidence before me that that the Tenants made an application to dispute the Notice.

The Landlord testified that the Tenants did not pay any rent within five days of receiving the Notice. The Landlord testified that the Tenants paid \$1350.00 for March rent on March 1, 2017.

The Landlord testified that the Tenant still owes rent for the following months:

- December 2016, in the amount of \$850.00
- January 2017, in the amount of \$150.00
- February 2017, in the amount of \$1,350.00

The Landlord testified that the Tenants have paid the \$503.00 owing for the utilities.

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$2,350.00.

The Landlords are seeking to keep the security deposit of \$750.00 in partial satisfaction of their claim.

### Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants did not pay the outstanding rent within five days of receiving the Notice, 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. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find that the Tenants owe the Landlord \$2,350.00 for unpaid rent.

I order that the Landlord can keep the security deposit in the amount of \$750.00 in partial satisfaction of the claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$2,450.00.00 comprised of \$2,350.00 in unpaid rent, and the \$100.00 fee paid by the Landlords for this hearing. After setting off the security deposit of \$750.00 towards the claim of \$2,450.00 I find that the Landlord is entitled to a monetary order in the amount of \$1,700.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

### Conclusion

The Tenants failed to pay the rent owing under the tenancy agreement within 5 days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and did not file to dispute the Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I order that the Landlords can keep the security deposit in the amount of \$750.00 in partial satisfaction of their claim for unpaid rent.

The Landlords are granted an order of possession effective 2 days after service on the Tenant and I grant a monetary order for the unpaid rent, and the cost of the filing fee in the amount of \$1,700.00.

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 30, 2017

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Residential Tenancy Branch