



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, MNSD, FF

### Introduction

On April 19, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession, a monetary order for unpaid rent; 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 attended the teleconference hearing; however, the Tenant did not. The Landlords testified that the Tenants with the Application for Dispute Resolution and Notice of Hearing, by registered mail sent on April 24, 2017.

I find that the Tenant has been duly served with the Notice of Hearing in accordance with sections 89 and 90 of the Residential Tenancy Act (the Act).

The Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Preliminary and Procedural Matters

The Landlords amended their claim on May 11, 2017, to include a request to keep the security deposit and for additional compensation. The Landlord testified that they served the amended application on the Tenant using registered mail on May 11, 2017.

During the hearing, the Landlords withdrew their claims for compensation for damage and cleaning of the unit and indicated they may pursue these claims after the Tenant vacates the rental unit. The Landlords are granted leave to reapply for compensation for these claims at a later date.

### Issues to be Decided

- Are the Landlords entitled to an order of possession for cause?
- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to keep the security deposit?
- Are the Landlords entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord testified that the tenancy began in September 2016. Rent in the amount of \$1,450.00 is to be paid on the first day of each month. The Tenant paid the Landlord a \$725.00 security deposit.

The Landlord testified that the Tenant is repeatedly late paying the rent when it is due under the tenancy agreement.

The Landlords issued a 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") by posting it on the Tenant's door on April 2, 2017. The reason checked off by the Landlords within the Notice is:

- *Tenant is repeatedly late paying rent*

The 1 Month Notice states the Tenant must move out of the rental unit by April 30, 2017. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice informed the Tenant that if an application to dispute the Notice is not filed within 10 days, he is presumed to accept the Notice and must move out of the rental unit on the date set out on page 1 of the Notice.

There is no evidence before me that that the Tenant made an application to dispute the 1 Month Notice.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the month of May 2017. The Landlord is seeking \$1,450.00 for loss of rent.

The Landlord testified that the Tenant stated he will not move out of the unit, so the Landlord is seeking an order of possession for the effective date of the 1 Month Notice.

The Landlords are seeking to keep the security deposit of \$725.00 in partial satisfaction of their claim for May 2017 rent.

The Landlords are seeking to recover the cost of the filing fee for the hearing.

### Analysis

Section 47 (5) of the Act states that if a Tenant who has received a Notice under this section does not make an application for dispute resolution in accordance with subsection (4), the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice.

Section 53 of the Act states if a Landlord or Tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed to be the earliest date that complies with the legislation.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant is deemed to have received the 1 Month Notice on April 5, 2017, and did not apply to dispute the Notice. The Tenant is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the effective date in 1 Month Notice is incorrect, and pursuant to section 53 of the Act it automatically corrects to be effective May 31, 2017.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective at 1:00 pm on May 31, 2017. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant failed to pay the rent due under the tenancy agreement for May 2017. I grant the Landlords \$1,450.00 for the loss of rent.

I authorize the Landlord to keep the security deposit in the amount of \$725.00 in partial satisfaction of the unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Based on the testimony that the Tenant has refused to leave the rental unit, I order the Tenant to pay the Landlords the \$100.00 fee that the Landlords paid to make application for dispute resolution.

After deducting the security deposit of \$725.00 from the \$1,450.00 owing for rent, the Landlords are owed 725.00 for May 2017, rent. I grant the Landlord a monetary order in the amount of \$825.00 comprised of \$725.00 for unpaid rent and the \$100.00 fee for the cost of the application.

### Conclusion

The Tenant received a 1 Month Notice To End Tenancy For Cause dated April 2, 2017, and did not apply to dispute the Notice. The Tenant was deemed served with the Notice of Hearing and did not attend the hearing.

The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The effective date of the 1 Month Notice To End Tenancy For Cause dated April 2, 2017, is May 31, 2017.

The Landlords are granted an order of possession effective at 1:00 pm on May 31, 2017, after service on the Tenant.

The Tenant failed to pay the rent owing under the tenancy agreement for the month of May 2017.

I authorize the Landlord to keep the security deposit in the amount of \$725.00 in partial satisfaction of the unpaid rent.

The Tenant must pay the Landlords for the \$100.00 fee for the cost of the Application.

The Landlords are granted a monetary order in the amount of \$825.00.

The Landlords are granted leave to reapply for compensation due to damage, or cleaning costs after the Tenant vacates the unit.

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: May 25, 2017

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Residential Tenancy Branch