



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR,

### Introduction

This was the landlord's application under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent pursuant to section 55 and a monetary order for unpaid rent pursuant to section 67.

The tenants did not attend the hearing. The individual landlord attended and was given a full opportunity to be heard, to present affirmed testimony, to present documentary evidence, and to make submissions.

As the tenants did not attend the hearing, service of the landlord's application and the notice of hearing were considered. The landlord provided affirmed testimony that he sent these materials and associated evidence to both of the named tenants individually on March 29, 2017 by registered mail to the rental unit address. Canada Post Registered Mail receipts were submitted in evidence. The landlord further testified that the tenants vacated the rental unit on March 31, 2017 and that he found the registered mail in the unit. I find that the named tenants have been duly served.

The landlord withdrew his request for an order of possession at the hearing because the tenants have vacated the rental unit.

### Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

### Background and Evidence

According to the written tenancy agreement in evidence and the landlord's affirmed and undisputed evidence, this tenancy began on May 1, 2016 as a one year fixed term tenancy with rent of \$1,200.00 payable on the first day of each month. A security deposit of \$600.00 was paid at the beginning of the tenancy.

The tenants on the written tenancy agreement are JD and DC. The landlord testified that at some point DC left and JW replaced him. At that point the landlord returned \$300.00 of the \$600.00 security deposit to DC and took \$300.00 from the new tenant, JW. The landlord has named JW in his application, not DC, although JW has not signed the tenancy agreement.

The landlord served the tenants JD and JW with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 17, 2017 (the "10 Day Notice") by posting it on the door of the rental unit that same day. The landlord provided a photograph of the 10 Day Notice taped to the door of the rental unit. In accordance with sections 88 and 90 of the Act, the tenants are deemed to have been served with the 10 Day Notice on March 20, 2017, three days after it was attached to their door.

The 10 Day Notice indicates a balance of \$600.00 owing for March rent. The landlord testified that the tenants failed to either dispute the notice or pay the full rent owing within five days of being served, and that the \$600.00 for March remains outstanding. The tenants vacated on March 31, 2017 without leaving a forwarding address.

### Analysis

In accordance with section 46(5) of the Act, the failure of the tenants to dispute the 10 Day Notice or pay the amount owing in full within five days of receipt of the notice led to the end of this tenancy on March 30, 2017, the corrected effective date of the 10 Day Notice. The tenants have since vacated the rental unit and an order of possession is therefore not required.

Sections 7(1) and 67 establish 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. The landlord provided undisputed evidence that the tenants failed to pay rent of \$600.00.

I accept that JW was a tenant although he did not sign the tenancy agreement, because he resided in the rental unit and paid half of the security deposit to the landlord when he moved in. Under s. 1 of the Act, a tenancy agreement may be oral or written, express or implied. In these circumstances, I find that JW had an implied tenancy agreement on the same terms as JD and that the two were co-tenants. Therefore, I find that JW is responsible for the rental arrears, as is JD.

The landlord continues to hold the tenants' security deposit. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenants' security deposit of \$600.00 in satisfaction of the monetary claim.

Conclusion

I authorize the landlord to retain the security deposit in satisfaction of his right to unpaid rent for March in the amount of \$600.00.

The landlord has waived his claim to the recovery of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 5, 2017

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Residential Tenancy Branch