



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, MNSD, FF, O

### Introduction

This hearing was convened by conference call in response to the Landlord's Application for Dispute Resolution (the "Application") made on June 21, 2017 for an Order of Possession based on a notice to end tenancy for cause. The Landlord also applied for a Monetary Order for: unpaid rent; to keep the Tenants' security deposit; to recover the filing fee from the Tenants; and for "Other" undisclosed issues.

The Landlord and one of the Tenants appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlords' Application and documentary evidence. The Tenant confirmed that he had not provided evidence prior to the hearing. The hearing process was explained to the parties and no questions were asked.

At the start of the hearing, the parties confirmed that the Landlord had received vacant possession of the rental unit. Therefore, I dismissed the Landlord's Application for an Order of Possession as this was now moot.

### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the monetary claim for unpaid rent?

### Background and Evidence

The parties agreed that this tenancy started on September 1, 2008 on a month to month basis. The written tenancy agreement shows monthly rent started at \$950.00 payable on the first day of each month. The parties agreed that the rent payable before the tenancy ended was \$977.55 which was agreed by the parties to be paid on the 15<sup>th</sup> day

of each month. The Tenants paid \$450.00 as a security deposit and \$450.00 as a pet damage deposit, both of which herein referred to collectively as the Deposits.

The parties confirmed that the Tenant appearing for this hearing was served with a notice to end tenancy for cause, namely repeatedly late payment of rent on April 2, 2017. The notice to end tenancy had a vacancy date of May 15, 2017. The parties confirmed that the Tenants vacated the rental unit at the end of June 2017.

The Landlord testified that the Tenants were in rental arrears of \$7,076.50 and the Landlord had applied for the outstanding amount after the Deposits had been deducted. The Tenant acknowledged that these amounts were owed to the Landlord and did not dispute the claim. The Tenant explained that he would work with the Landlord after this hearing to pay off the debt owed.

### Analysis

Section 26 of the *Residential Tenancy Act* (the "Act") requires a tenant to pay rent under a tenancy agreement whether or not the landlord complies with the Act. In relation to the Landlord's monetary claim, I accept the Landlord's undisputed evidence that the Tenants are in rental arrears for a total of \$7,076.50. Therefore, this amount is awarded to the Landlord.

Since the Landlord has been successful in this Application, I also grant the recovery of the \$100.00 filing fee for the cost of having to make this Application. Therefore, the total amount awarded to the Landlord is \$7,176.50.

As the Landlord has been holding the Tenants' \$900.00 Deposits in trust since September 1, 2008, interest is payable on this amount. Using the Deposit Interest Rate calculator on the Residential Tenancy Branch website, the interest payable at the time of making this Decision is calculated at \$4.50 for a total amount of \$904.50 in Deposits.

Pursuant to Section 72(2) (b) of the Act, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. As a result, the Landlord is granted a Monetary Order for the remaining balance of \$6,272.50 (\$7,176.50 - \$904.50). This order must be served on the Tenants and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court if there is a failure to make payment.

Copies of the above orders for service and enforcement are attached to the Landlord's copy of this Decision. The Tenants may also be held liable for any enforcement costs incurred by the Landlord.

### Conclusion

The tenancy has now ended. Therefore, the Landlord's Application for an Order of Possession is moot and is dismissed without leave to reapply.

The Landlord is awarded unpaid rent and the filing fee. The Landlord may achieve this relief by keeping the Tenants' Deposits, plus the accrued interest, and is issued with a Monetary Order for the remaining balance of \$6,272.50.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 05, 2017

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Residential Tenancy Branch