



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, MNDCL, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”). The landlord is seeking an Order of Possession, a Monetary Order for unpaid rent, a Monetary Order for damages or loss and reimbursement of the filing fee.

The hearing was conducted via teleconference. The landlord, the landlord’s husband GS (who was called as a witness), and the tenant CH on behalf of both tenants (the *tenants*), attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties agreed the tenants were served with the Notice of Hearing documents pursuant to Section 59(3) and 89(2)(d) of the *Act* by attaching them to the tenants’ door on May 4, 2018.

Based on the submissions of the parties, I find that the tenants have been sufficiently served with the documents pursuant to Section 89 and in accordance with Section 90 of the *Act* are deemed to have received the Notice of Hearing package on May 7, 2018.

### Issue(s) to be Decided

The issues to be decided:

- Is the landlord entitled to an Order of Possession pursuant to Section 46(5) and 55 of the *Act*?
- Is the landlord entitled to a Monetary Order pursuant to Section 67 for non-payment of rent?

- Is the landlord entitled to a Monetary Order for damage or loss pursuant to Section 67 of the *Act*?
- Is the landlord entitled to reimbursement of the filing fee pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties agree on the following:

- The landlord and tenants entered into a verbal residential tenancy agreement for the rental of the premises commencing March 6, 2018.
- Although the tenancy did not begin until March 6, 2018, the tenants agreed to pay \$700.00 for the month of March 2018 and \$700.00 for each month thereafter on the first of the month.
- A security deposit of \$350.00 was payable. The landlord states only \$50.00 was paid; the tenants claim to have paid the full amount.
- The tenants paid \$600.00 in cash for rent when they moved in and the landlord did not issue a receipt.
- On March 17, 2018, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent by placing it in the tenants' mail slot. The landlord is not relying upon this Notice.
- On April 26, 2018, the landlord served the tenants with a second 10 Day Notice to End Tenancy for Unpaid Rent ("the Ten Day Notice") by placing it in the tenants' mail slot and relies upon this Notice as the basis for the Order of Possession.

While the tenant acknowledged the posting of the Ten Day Notice, no copy of the Ten Day Notice was entered into evidence.

The landlord claims a monetary award for the following:

Rent	Balance of rent owing for March 2018	\$100.00
	Rent for April 2018 - unpaid	\$700.00
	Rent for May 2018 – unpaid	\$700.00
	Rent for June 2018 – (anticipated) unpaid	\$700.00
Security Deposit	Balance of security deposit	\$300.00
Cleaning and damage	Estimated expense	\$420.00
	<b>TOTAL of landlord's claims</b>	<b>\$2,250.00</b>

The landlord did not submit any receipts, ledgers, accounts, monetary worksheets, or any documentary evidence relating to financial matters between the parties.

The landlord submitted photographs which she testified indicated the premises needed cleaning. She also submitted photographs of bent window blinds, for which she said the tenants were responsible. The landlord said she had not yet incurred any costs but claimed anticipated expenses for cleaning and replacement of the blinds of \$420.00.

The tenants contradicted the landlord's evidence as follows:

- The tenants allege they paid the security deposit of \$350.00 when they paid rent of \$600.00 at the start of the tenancy and did not receive a receipt for either payment;
- The tenant CW testified he gave the landlord \$2,250.00 in cash on March 17, 2018 for the following:

Balance of rent owing for March 2018	\$100.00
Rent paid in advance for April 2018	\$700.00
Rent paid in advance for May 2018	\$700.00
Rent paid in advance for June 2018	\$700.00
Gift for the landlord's children	\$50.00
<b>TOTAL CASH Payment</b>	<b>\$2,250.00</b>

- The tenant CW testified he did not ask for a receipt for the payment of \$2,250.00 to the landlord as he did not think it was necessary because of the relationship of trust and goodwill he believed they had;
- The pictures of the premises submitted by the landlord are not pictures of the premises; and
- The pictures of the damaged blinds accurately represent the condition of the blinds in the unit but the damage was caused by the landlord herself and not by the tenants.

The landlord denied receipt of any cash payment (other than the \$600.00 rent and \$50 security deposit). This evidence was supported by the landlord's witness GH, her husband.

The tenant CW testified with respect to an incident that occurred a few days after the landlord served them with the Ten Day Notice. He said he woke to the sound of the landlord smashing his dishes in the kitchen. The landlord appeared angry. The tenant CW said he called the police who took the landlord into custody, following which a judicial order was made against the landlord prohibiting her from having contact with the tenant. The tenants provided a Police Incident Report number. The landlord admitted this incident had taken place.

The tenants also testified the landlord had previously entered their apartment without consent and damaged the blinds herself while trying to prohibit the tenants from entering.

### Analysis

While I have turned my mind to all the documentary evidence as well as the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the landlord's claims and my findings around each are set out below.

### Order of Possession

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due.

Section 26(2) of the *Act* stipulates a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made. When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has **not** been made.

When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made.

When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment. The landlord's failure to provide receipts for cash payments made during a tenancy can significantly impair her ability to prove the tenant did not pay rent.

In this case, the landlord did not submit any evidence, such as a copy of a payment ledger, to corroborate her claim that the tenant did not pay \$2,250.00.

However, the landlord provided supporting testimony from her husband that no such cash payment had been made. The landlord also candidly admitted to the incident involving the police a few days after the issuance of the Ten Day Notice. While not excusable, I find the landlord's Actions more in keeping with an angry landlord to whom rent is owed, rather than a landlord who has not only received all arrears, but has been paid two months in advance, as alleged by the tenants.

I also find that the landlord's receipt of one cash transaction at the beginning of the tenancy does not lead to the conclusion the tenant made a substantial subsequent payment without a receipt being issued, particularly considering the fact the tenant has provided no corroboration.

The tenants have not disputed the Ten Day Notice issued by the landlord. Instead, the tenant CW gave unsubstantiated testimony he made a \$2,250.00 cash payment to the landlord on March 17, 2018. The tenant submitted no documents in support of his claim to have made this substantial cash payment, such as a bank statement showing a cash withdrawal. He called no witnesses and the other tenant MS did not testify.

I find, on a balance of probabilities, it is unlikely a tenant who could not pay the full amount of the rent and security deposit prior to the start of tenancy would then pay for 3 additional months within 3 weeks of starting the tenancy. Without any evidence to corroborate this assertion, I find the tenant's submissions are not reliable.

In weighing the evidence, I conclude the landlord has met the burden of proving on a balance of probabilities that the rent remains owing as she testified.

Section 46 of the *Act* states as follows

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

**(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**

**(b) must vacate the rental unit to which the notice relates by that date**  
(emphasis added)

The Landlord has not submitted a copy of the Ten Day Notice. Section 52 of the *Act* states to be effective, a notice to end a tenancy must be in writing and must be in the approved form. Without a copy of the Ten Day Notice or evidence of its form and content, I am unable to determine if it complied with Section 52 of the *Act*.

I therefore dismiss the application for an Order of Possession with leave to reapply.

**Monetary Order**

I have found the tenants are in arrears of rent as claimed by the landlord. By their own admission, the tenants remain in the premises. Therefore, the landlord is entitled to a monetary award for unpaid rent as follows:

March 2018 – outstanding rent	\$100.00
April 2018 – unpaid rent	\$700.00
May 2018 – unpaid rent	\$700.00
<b>Monetary Order</b>	<b>\$1500.00</b>

By her own testimony, the landlord states the tenants have not yet vacated the premises. Therefore, her claim for damages to the premises are premature as is her claim for unpaid rent for the month of June 2018. I dismiss the landlord's application for a monetary award for damage to the premises and rent for the month of June 2018 with leave to reapply.

As the landlord has been mostly successful in her application, I also award her a monetary award for reimbursement of the filing fee pursuant to Section 72 in the amount of \$100.00.

Conclusion

The landlord is granted a Monetary Order in the amount of \$1,600.00. This Order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the Order in the Provincial Court (Small Claims) and be enforced as an Order of that Court.

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 22, 2018

---

Residential Tenancy Branch