



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR; OPR, MNRL, FFL

### Introduction

This hearing was scheduled in response to the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;

This hearing was also scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not participate in the conference call hearing to present their claim; consequently the tenants' entire application is dismissed without leave to reapply.

The landlord testified that on December 5, 2018 he forwarded the landlord's application for dispute resolution hearing package via registered mail to the tenants which were returned to him unclaimed. The landlord provided the Canada Post tracking numbers into oral evidence to verify this method of service; these numbers are detailed on the front page of this Decision. Section 90 of the *Act* deems a party served with documents five days after mailing even if the recipient does not pick up the mail. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the hearing package on December 10, 2018, the fifth day after their registered mailing.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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

Is the landlord authorized to recover the filing fee for this application from the tenants?

### Background and Evidence

As per the testimony of the landlord, this tenancy, based on an oral agreement began on June 1, 2018. Rent in the amount of \$800.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$400.00 at the start of the tenancy, which the landlord still retains in trust. The tenants continue to reside in the rental unit.

The landlord testified that on November 21, 2018 he personally served the 10 Day Notice to the tenants. Based on the undisputed testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the 10 Day Notice on November 19, 2018.

The landlord seeks a monetary order in the amount of \$3,470.00 for unpaid rent from September 2018 to January 2019. The landlord claimed that the tenants paid a total of \$530.00 in rent for the above five months.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

### Analysis

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective notice. As the tenants did not pay the overdue rent and their application has been dismissed, the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes 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.

I find that the landlord proved that the current rent for this unit is \$800.00. I find the landlord provided undisputed evidence that the tenants failed to pay full rent from September 2018 to January 2019. Therefore, I find that the landlord is entitled to \$3,470.00 in rent.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$400.00 in partial satisfaction of the monetary award and I grant an order for the balance due of \$3,070.00. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$3,170.00

### Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an order of possession to the landlord effective **two (2) days after service on the tenants**.

I issue a monetary order in the landlord's favour in the amount of \$3,170.00 against the tenants.

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: January 10, 2019

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Residential Tenancy Branch