



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

On January 22, 2019, the Landlord filed an Application for Dispute Resolution by Direct Request. The Landlord was seeking an order of possession for the rental unit due to unpaid rent or utilities and for a monetary order to recover unpaid rent or utilities.

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act*. The ex-parte review was completed and a Decision was issued on January 28, 2019. The adjudicator found a an issue with a proof of service document and ordered the matter be heard by participatory hearing. The Landlord was ordered to serve the Tenants a Notice of Reconvened Hearing.

The Landlord appeared at the hearing; however the Tenants did not. The Landlord provided affirmed testimony that the Tenants were served with the Notice of Dispute Resolution Proceeding documents by registered mail sent on February 1, 2019. The Landlord provided a copy of the registered mail label and tracking number as proof of service.

I find that the Tenants were duly served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of 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.

### Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord testified that the tenancy began on November 1, 2016, and is currently on a month to month basis. Rent in the amount of \$2,000.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlords a security deposit in the amount of \$1,000.00. The Landlords provided a copy of the tenancy agreement.

The Landlords testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 14, 2019 ("the 10 Day Notice").

The Landlord testified that the 10 Day Notice was served by hand to the Tenant on January 14, 2019. The Landlord provided a copy of the 10 Day Notice. The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$2,500.00 which was due on January 1, 2019.

The Landlord testified that the Tenants did not pay the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice. The Landlords testified that the Tenants have not paid any rent to the Landlord since the 10 Day Notice was issued.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord is seeking an order of possession for the rental unit due to non-payment of rent.

The Landlord is seeking a monetary order for unpaid January 2019, rent in the amount of \$2,000.00. The Landlord testified that the Tenants also owe a balance of \$500.00 from December 2018, rent.

The Landlord requested to amend the application to include unpaid rent for February 2019. The Landlord testified that the Tenants are still living in the unit and have not paid the rent for February 2019. The Landlords are seeking \$2,000.00 for February 2019 rent.

### Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants were served with the 10 Day Notice and did not pay all the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice, and did not apply to dispute the Notice, and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. This order of possession may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find that the Tenants owe the Landlords \$2,500.00 in unpaid rent due January 1, 2019. I find it is reasonable to permit the Landlords to amend the application to include February 2019 rent in

the amount of \$2,000.00. The Tenants are living in the unit and know that the rent of \$2,000.00 is due each month.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I grant the Landlords a monetary order in the amount of \$4,600.00.

### Conclusion

The Tenants failed to pay the rent due under the tenancy agreement within five days of receiving a 10 Day Notice and did not file to dispute the Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

The Landlords are granted an order of possession effective two (2) days after service on the Tenants.

I grant the Landlord a monetary order in the amount of \$4,600.00. for unpaid rent and the cost of the filing fee.

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: March 14, 2019

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Residential Tenancy Branch