



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPUM-DR, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession and a monetary order for unpaid rent or utilities. The landlords had originally applied by way of the Direct Request process, which was adjourned to this participatory hearing.

Both landlords attended the hearing, and one gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call. The landlord testified that each tenant was served with the Application for Dispute Resolution, evidence and notice of this hearing individually by registered mail on March 24, 2019. The landlords have provided receipts from Canada Post as evidence for this hearing, and I am satisfied that all tenants have been served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

- Should the landlords be granted an Order of Possession for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?

### Background and Evidence

The landlord testified that this fixed-term tenancy began on May 6, 2018 and expires on June 30, 2019, and the tenants still reside in the rental unit. Rent in the amount of \$1,650.00 is payable on the 1<sup>st</sup> day of each month and the landlords collected a pro-rated amount for the first month of the tenancy. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$825.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a 3

bedroom townhome, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenants only paid a portion of the rent for January, 2019, leaving \$550.00 outstanding, and no rent has been paid since. The tenants are in arrears \$550.00 for January's rent as well as \$1,650.00 for each of February, March and April, 2019, for a total of \$5,500.00.

On February 18, 2019 the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to one of the tenants. A copy of the first page only has been provided as evidence for this hearing, and the landlord was permitted to provide both pages of what was actually served after the hearing had concluded. I have now received both pages of the 2-page form. It is dated February 18, 2019 and contains an effective date of vacancy of February 27, 2019 for unpaid rent in the amount of \$2,200.00 that was due on February 18, 2019.

The tenants have not paid the rent or served the landlords with an Application for Dispute Resolution disputing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and rental arrears have continued to accumulate. One of the tenants provided a signed note to the landlords acknowledging owing \$550.00 for January and \$1,650.00 for February's rent, for a total at that time of \$2,200.00, and agreeing that the \$850.00 damage deposit goes towards unpaid rent. It also states that \$650.00 is owed for March rent.

The landlords seek an Order of Possession and a monetary order for rental arrears of \$5,500.00 as well as recovery of the \$100.00 filing fee.

### Analysis

The *Residential Tenancy Act* specifies that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent in full or dispute the notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit.

In this case, I am satisfied that the tenants were served with the Notice and have not paid the rent or served the landlords with an application disputing the Notice. Therefore, I am satisfied that the landlords are entitled to an Order of Possession. Since the effective date of vacancy contained in the Notice has passed, I grant the Order of Possession on 2 days notice to the tenants.

I also accept the undisputed testimony of the landlord that the tenants owe \$550.00 for January's rent, as well as \$1,650.00 for each of February, March and April, for a total of \$5,500.00.

The note from the tenant acknowledging that the landlords are owed \$2,200.00 indicates that the security deposit was \$850.00, however the landlord testified that the security deposit was \$825.00, and the tenancy agreement specifies \$825.00. I find that an error exists, and I decline to order that the landlords keep the security deposit in partial satisfaction of the unpaid rent. I order the landlords to deal with the security deposit in accordance with the *Residential Tenancy Act*.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,600.00.

I order the landlords to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

This order is final and binding and may be enforced.

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: April 17, 2019

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Residential Tenancy Branch