



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PRO-GRESS CONST  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNDL, MNRL, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants, the tenants' legal advocate and the landlord's property manager (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified, and the tenants confirmed, that the landlord served the tenants with the notice of dispute resolution application. I find that the tenants have been served with the required documents in accordance with the *Act*.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 2, 2015 between the landlord and tenant S.J. and is currently ongoing. Tenant K.K. moved into the subject rental property, with the permission of the landlord, sometime in the fall of 2018. Monthly rent in the amount of \$680.00 is payable on the first day of each month. A security deposit of \$340.00 was paid by tenant S.J. to the landlord.

The landlord testified that on March 13, 2019 a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of March 23, 2019 (the "10 Day Notice") was posted on the tenants' door. The landlord testified that he saw tenant S.J. holding the 10 Day Notice on March 13, 2019. The tenants testified that they received the 10 Day Notice on March 14, 2019. The 10 Day Notice states that the tenants failed to pay rent in the amount of \$680.00 that was due on March 1, 2019.

Tenant K.K. testified that her rent was usually automatically sent to the landlord from the government but an error occurred and her portion of the rent was not sent to the landlord for February and March 2019. The tenants testified that as soon as they were notified of the error, they contacted the government and other supports to ensure that the outstanding rent was paid to the landlord.

Both parties agree that on March 18, 2019 tenant S.J. texted the landlord as follows:  
Hello [landlord], this is [tenant S.J.]. Welfare will have a cheque ready tomorrow for \$340.00 and [individual's name] will give us another \$300.00 & we will give you another \$40 in cash. All tomorrow. Okay? Then can we stay????

Both parties agree that the landlord did not respond via text message and tenant S.J. texted the landlord again on March 19, 2019 as follows:  
So you never answered me yesterday. We are in town getting you the rent. Yesterday was day 5! You served us on Thur. Can we stay? Or do we need to be out?

Both parties agree that on March 19, 2019 the landlord responded as follows:

Head office said no you have to go sorry.

The landlord testified that based on his calculations the tenants were past the 5 days allowed under the *Act* to pay their rent and so he refused to accept rent from the tenants from March 19, 2019 to the present date with the exception of an electronic funds transfer from the government in the amount of \$340.00 for 1/2 April 2019's rent. The tenants testified that they had the outstanding rent in the amount of \$680.00 ready to pay the landlord on March 19, 2019 but he refused to accept it.

Both parties agree that the tenants owe \$1,700.00 in outstanding rent comprised as follows:

- February 2019 - \$340.00;
- March 2019 - \$340.00;
- April 2019 - \$340.00; and
- May 2019 - \$680.00.

The tenants' legal advocate testified that the tenants had five days from the receipt of the 10 Day Notice to pay the outstanding rent. Five days from March 14, 2019 was March 19, 2019. Since the tenants attempted to pay the outstanding rent on March 19, 2019, they were within the five-day period permissible under the *Act* to pay rent.

The landlord testified that he is also seeking to retain the tenants' security deposit as he believes the tenants have damaged the subject rental property.

### Analysis

According to Policy Guideline 12 section 12, the date a person receives documents is what is used to calculate time. The landlord testified that he saw tenant S.J. with the 10 Day Notice in her hand on March 13, 2019. The tenants testified that they did not receive the 10 Day Notice until March 14, 2019.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. Thus, in this case, the burden of proof falls on the landlord.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the landlord has not proved, on a balance of probabilities, that the tenants received the 10 Day Notice on March 13, 2019. Therefore, pursuant to the tenants' testimony, I find that the tenants received the 10 Day Notice on March 14, 2019.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In this case, I have found that service was effected on March 14, 2019; therefore the effective date on the notice, pursuant to section 53(2) of the *Act* is deemed to be the earliest date that complies with the section 46 of the *Act*, that being 10 days after the date the tenants received notice. The corrected effective date is therefore March 24, 2019.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the 10 Day Notice has no effect.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that in order to give effect to section 26 of the *Act*, the landlord must accept that rental payment.

I find that the tenants were ready and able to pay the landlord the outstanding rent in the amount of \$680.00 on March 19, 2019, five days after receiving the 10 Day Notice. I find that had the landlord accepted the outstanding funds on March 19, 2019 the 10 Day

Notice would have been cancelled in accordance to section 46(4) of the *Act*. I find that the landlord is not entitled an Order of Possession based on the landlord's refusal to accept rent. I find that the landlord was not permitted to refuse to accept rent. On this basis I find that the 10 Day Notice is cancelled and of no force or effect. I note that the landlord could have accepted rent and issued the tenants a receipt for use and occupancy only, thereby protecting the landlord's position and complying with the landlord's duty under the *Act* to accept rent.

I Order the landlord to accept rent from the tenants.

I Order the tenants to pay to the landlord \$1,700.00 in outstanding rent for the months of February 2019 to May 2019 by June 10, 2019 at 1:00 p.m. If the outstanding funds are not paid to the landlord by June 10, 2019 at 1:00 p.m., the landlord may serve a 10 Day Notice for Unpaid Rent on the tenants.

I Order the tenants to pay June 2019's rent and all rent going forward in accordance with the tenancy agreement and the *Act*.

As I have found that this tenancy is continuing, I find that an application to retain the tenants' security deposit is premature. I dismiss the landlord's application to retain the tenants' security deposit with leave to reapply.

While the landlord was partially successful in its application, I find that the landlords are not entitled to recover the \$100.00 filing fee from the tenants because the Monetary Order would not have been necessary if they had accepted rent.

Conclusion

The 10 Day Notice is cancelled and of no force or effect.

I Order the landlord to accept rent from the tenants.

I issue a Monetary Order to the landlord in the amount of \$1,700.00 to be served on the tenants only if the tenants do not pay \$1,700.00 to the landlord on or before 1:00 p.m. on June 10, 2019.

Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I Order the tenants to pay June 2019's rent and all rent going forward in accordance with the tenancy agreement and the *Act*.

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 30, 2019

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Residential Tenancy Branch