



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNDL-S, OPR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on March 15, 2019 (the "Application"). The Landlords sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 01, 2019 (the "Notice"). The Landlords also sought compensation for damage to the rental unit, to keep the security deposit and reimbursement for the filing fee.

The Landlord attended the hearing with her daughter to assist given a language barrier. Nobody attended the hearing for the Tenants.

The Landlord confirmed the Landlords are seeking to recover unpaid rent and not seeking compensation for damage to the rental unit.

I explained the hearing process to the Landlord and her daughter and neither had questions about the process when asked. Both provided affirmed testimony.

The Landlords had submitted evidence prior to the hearing. The Tenants had not submitted evidence. I addressed service of the hearing package and Landlords' evidence.

The Landlord testified that her husband and friend served the hearing package and evidence on each Tenant in person at the rental unit on March 16, 2019. The Landlords did not submit evidence of service.

Based on the undisputed testimony of the Landlord, I find the Tenants were served with the hearing package and evidence in accordance with sections 59(3), 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the "Act").

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Landlord was given an opportunity to present relevant evidence, make relevant submissions

and ask relevant questions. I have considered all documentary evidence and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the Notice?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to keep the security deposit towards unpaid rent?
4. Are the Landlords entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlord, on her own and through her daughter, testified as follows.

There is a verbal tenancy agreement between the Landlords and Tenants in relation to the rental unit. The tenancy started July 01, 2018. The Tenants agreed to stay until the end of February and then no further term was agreed upon. Rent is \$850.00 per month due on the first day of each month. The Tenants paid a \$425.00 security deposit.

The Notice states the Tenants failed to pay \$1,700.00 that was due February 01, 2019. The Notice is addressed to the Tenants and refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of March 10, 2019.

The Landlord testified that she and her husband served both pages of the Notice on the Tenants in person March 01, 2019.

The Landlord testified that the Tenants did not pay any rent for February or March. She testified that the Tenants paid \$650.00 of rent on April 18, 2019 but no further rent. The Landlord asked to amend the Application to seek the \$1,900.00 currently outstanding for February, March and April rent.

The Landlord testified that she is not aware of the Tenants disputing the Notice. She testified that the Tenants did not have authority under the *Act* to withhold rent.

### Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows landlords to end a tenancy where tenants have failed to pay rent. The relevant portions of section 46 state:

- 46** (1) 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.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this *Act* to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (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.

...

Based on the undisputed testimony of the Landlord, I accept the Tenants are obligated under the tenancy agreement to pay \$850.00 in rent by the first day of each month. I accept the undisputed testimony of the Landlord that the Tenants did not have a right to withhold rent under the *Act*. I have no evidence before me that they did. I find the Tenants were required to pay \$850.00 in rent for February by February 01, 2019 and \$850.00 in rent for March by March 01, 2019 pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I accept the undisputed testimony of the Landlord that the Tenants did not pay any rent for February or March. I also accept the undisputed testimony of the Landlord that the Tenants only paid \$650.00 in rent on April 18, 2019 and that they made no further rent payments.

The Notice was issued March 01, 2019 stating the Tenants owed \$1,700.00. The Landlords were not permitted to serve the Notice for unpaid rent for March on March 01, 2019 because rent was only due March 01, 2019 and therefore was not yet unpaid when the Notice was issued. However, the Tenants had failed to pay rent for February and therefore the Landlords were permitted to issue the Notice for unpaid rent in the amount of \$850.00 for February. The

Notice should have stated that rent in the amount of \$850.00 was due February 01, 2019. However, I do not find this error affects the validity of the Notice. The Tenants would have known what rent was outstanding when the Notice was issued. I do not find that the error prejudiced the Tenants. Further, the Tenants should have disputed the Notice if they took issue with the amount noted on it.

Given the Tenants failed to pay rent as required in February, the Landlords were entitled to serve them with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Landlord, I find the Tenants were served with the Notice in accordance with section 88(a) of the *Act*. Given the Notice was served in person, I accept the Tenants received it March 01, 2019.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenants had five days from receipt of the Notice on March 01, 2019 to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of the Landlord that the Tenants did not dispute the Notice. I have no evidence before me that they did. I also accept the undisputed testimony of the Landlord that the only payment made after the Notice was issued was in the amount of \$650.00 on April 18, 2019. This was well after the five-day time limit and was not the full amount of rent outstanding and therefore did not cancel the Notice under section 46(4) of the *Act*.

Given the Tenants did not pay the full amount outstanding or dispute the Notice as required, I find pursuant to section 46(5)(a) of the *Act* that the Tenants are conclusively presumed to have accepted that the tenancy ended March 11, 2019, the corrected effective date of the Notice. The Tenants were required under section 46(5)(b) of the *Act* to vacate the rental unit by March 11, 2019.

The Landlords are entitled to an Order of Possession. Pursuant to section 55(3) of the *Act*, I grant the Landlords an Order of Possession effective two days after service on the Tenants.

I accept the undisputed testimony of the Landlord that the Tenants currently owe \$1,900.00 in unpaid rent for February, March and April. I find the Landlords are entitled to monetary compensation in this amount.

As the Landlords were successful in this application, I grant the Landlords \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

The Landlords are therefore entitled to monetary compensation in the amount of \$2,000.00. Pursuant to section 72(2) of the *Act*, the Landlords are permitted to keep the \$425.00 security

deposit towards the outstanding rent. Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of \$1,575.00.

### Conclusion

The Landlords are entitled to an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlords are entitled to monetary compensation in the amount of \$2,000.00. The Landlords are permitted to keep the \$425.00 security deposit. I issue the Landlords a Monetary Order in the amount of \$1,575.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and 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 *Act*.

Dated: May 07, 2019

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Residential Tenancy Branch