



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

On April 17, 2019, the landlords' application for dispute resolution was heard by way of a Direct Request Proceeding. The landlord was granted an order of possession and a monetary order, pursuant to section 55 and 67 of the Act.

On April 23, 2019, the tenant made an application for review consideration, which was granted on the basis of fraud and a new hearing was granted. The Arbitrator at the new hearing may confirm, vary, or set aside the original decision and order.

This new hearing dealt with an Application for Dispute Resolution by the landlords for an order of possession based on unpaid rent, for a monetary order for unpaid rent and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The tenants confirmed receipt the landlord's evidence. The landlords testified that they did not receive any evidence from the tenants. The tenants stated that they had two people that tried to serve the landlords on May 10, 2019, and the landlords refused service, which was video recorder.

In this case, even if I accept the tenants evidence that the landlords refused service of the evidence, I am not satisfied that the evidence is relevant to the issue of unpaid rent, with the exception of the banks record. Therefore, I will not consider any evidence that does not relate to the issue of unpaid rent.

Issues to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on March 31, 2019. Rent in the amount of \$1,650.00 was payable on the first of each month. A security deposit of \$825.00 was paid by the tenants, which was paid in multiple payments.

The landlord's agent testified that the tenants only paid the amount of \$400.00 toward April 2019 rent and were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") issued on April 5, 2019, noting that rent in the amount of \$1,250.00 was owing. The agent testified that the tenants were served with the Notice in person, which was witnessed by a third party.

The landlord's agent testified that the tenants have not paid rent for April (\$1,250.00), May (\$1,650.00) and June (\$1,650.00) 2019, in the total amount of \$4,550.00. The landlords seek an order of possession and a monetary order.

The tenant KW argued that they did not receive a copy of the Notice on April 5, 2019. The tenant stated that the landlord was at the rental unit on April 5, 2019, discussing problems with the tenancy. The tenants stated that they received a copy of the Notice on or about April 17, 2019.

The tenant KW testified that rent for April rent was paid in cash on March 30, 2019, which was paid in \$100.00 bills. The tenant stated that each of the tenants withdrew the money from their respective accounts.

The tenant KW acknowledged they have not paid rent for May and June 2019.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

In this case, I accept the evidence of the landlords that the tenants were served with the Notice in person on April 5, 2019. This is supported by the landlords' witness statement. I also accept the tenant's evidence that they received a copy of the Notice on or about April 17, 2019. The tenants filed for a review of the landlord's application; however, the tenants' did not make their own application to dispute the Notice, which would have been reasonable when they received the Notice and was a requirement under the Act.

I find that the landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order 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.

In this case, the tenant argued that rent was paid on March 30, 2019, in cash, which was taken from three separate bank accounts. The tenants did not provide a copy of any of the three bank statements for March 2019, for my review and consideration, which would have been reasonable if rent was paid as claimed.

However, the tenants did provide their April 2019, bank statement to show when the security deposit was paid, which the security deposit is not relevant to the issue of unpaid rent. I find it more likely than not that rent was not paid for April 2019 and the tenants have not paid any subsequent rent for May, and June 2019.

I find the tenants breached the Act, when they failed to pay rent, and this caused losses to the landlord. I find the landlords are entitled to recover unpaid rent in the amount of **\$4,550.00**.

I find that the landlords have established a total monetary claim of \$4,650.00 comprised of unpaid rent, and the \$100.00 fee paid by the landlords for this application.

I order that the landlords retain the security deposit of \$825.00 in partial satisfaction of the claim and I grant the landlords an order pursuant to section 67 of the Act, for the balance due of **\$3,825.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Therefore, I confirm the original decision granting the order of possession issued on April 17, 2019, and vary the original monetary order. The new monetary order included subsequent unpaid rent, filing fee and offset of the monetary order with the security deposit.

Conclusion

I confirm the original Order of Possession made on April 17, 2019, I cancel the monetary order issued on April 17, 2019, and issue a new monetary as shown above.

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: June 18, 2019

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Residential Tenancy Branch