



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNDCL-S, FFL

### Introduction

This hearing dealt with the landlords' 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 damage or compensation, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:43 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords testified that they personally served the tenants with their application for dispute resolution within three days of receiving it from the Residential Tenancy Branch but could not recall the specific date. I find that the tenants were served with the landlord's application for dispute resolution in accordance with section 89 of 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 damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security and pet damage deposits, pursuant to section 38 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 the landlords' agent, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords' agent provided the following undisputed testimony. This tenancy began approximately three years ago and is currently ongoing. The parties have a verbal tenancy agreement, not a written tenancy agreement. Monthly rent in the amount of \$600.00 is payable on the first day of each month. A security deposit of \$300.00 was paid by the tenants to the landlords.

The landlords' agent testified that on August 2, 2019 a 10 Day Notice to End Tenancy for Unpaid rent with an effective date of August 17, 2019 (the "10 Day Notice") was posted on the tenants' door. A witnessed proof of service document stating same was entered into evidence. The 10 Day Notice states that the tenants failed to pay \$600.00 that was due on July 1, 2019.

The landlords' agent testified that the tenants' made the following rent payments between July 1, 2019 to August 30, 2019 on the following dates:

- July 10, 2019: \$300.00
- August 10, 2019: \$900.00

The landlords entered into evidence two rent receipts dated August 10, 2019 totaling \$900.00. The landlords' agent testified that once the landlords received the August 10, 2019 rent payments, the tenants were up to date on their rent; however, the tenants did not pay September or October 2019's rent.

The landlords' agent testified that the landlords' claim for a monetary order for damage and compensation was made to recover the \$100.00 filing fee from the tenants.

### Analysis

I find that the tenants were deemed served with the 10 Day Notice on August 5, 2019, three days after its posting, pursuant to sections 88 and 90 of the *Act*.

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 46(4) states that if within 5 days after receiving a notice under this section, the tenant pays the overdue rent, the notice has no effect

Based on the landlords' agent's testimony and the rent receipts entered into evidence, I find that the tenants paid the rent stated as outstanding on the 10 Day Notice, on August 10, 2019, five days after they were deemed to have received the 10 Day Notice. Pursuant to section 46(4) of the *Act*, I find that since the tenants paid the outstanding rent within five days of receiving the 10 Day Notice, the 10 Day Notice is cancelled and has no force or effect.

As the landlords were not successful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

As this tenancy is ongoing, I find that the landlords' claim to retain the tenants' security deposit is pre-mature. I therefore dismiss the landlords' application to retain the tenants' security deposit.

### Conclusion

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

The landlords' application is dismissed without leave to reapply.

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: October 25, 2019

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Residential Tenancy Branch