



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent, late fees, and to recover the filing fee from the tenants.

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.

Both parties confirmed at the hearing that they were not recording the hearing in compliance with the Residential Tenancy Branch Rules of Procedure.

The tenant confirmed they received the evidence of the landlord. The tenant confirmed they did not submit any evidence.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

### Background and Evidence

The tenancy began on July 1, 2019.. Rent in the amount of \$1,700.00 was payable on the first of each month. A security deposit of \$850.00 and a pet deposit was paid by the tenants.

The landlord testified that the tenants did not pay rent for December 2020 and were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on December 7, 2020 and posted to the door.

The landlord testified that the tenants did not pay the December 2020, within 5 days and the tenants did not make an application for dispute resolution. The landlord stated that the tenants did pay their rent on December 23, 2020; however, they issued a receipt for use of occupancy as they were not reinstating the tenancy. The landlord seeks an order of possession.

The landlord testified that the tenants were in rent arrears from April 2020 to August 2020, in the total amount of \$2,375. The landlord stated that they gave the tenants a repayment plan which worked out to the amount of 237.00 to be repaid over the next 10 months. The landlord stated no payments were made and the balance remains at \$2,375.00

The landlord testified that since September 2020, the tenants made the following payment towards the monthly rent:

RENT DUE	RENT PAID	BALANCE DUE	TOTAL OWED
September	850.00.00	\$850.00	\$ 850.00
October	\$2,000.00	\$(300.00)	\$ 550.00
November	\$1,700.00	\$200.00	\$ 750.00
December	\$1,700.00	0	\$ 750.00
January	0	1,700.00	<b>\$ 2,450.00</b>

The landlord testified that the total rent owed, is \$2,375.00 and \$2,450.00 for the total amount of \$4,825.00.

The landlord testified that because the tenants were late paying rent on five occasions and that the tenancy agreement states that they are entitled to recover a late rent fee of \$25.00 for the months that they were late. The landlord seeks to recover late fees of \$125.00.

The tenant testified that they did receive the Notice. The tenant stated they did not dispute the Notice and confirm rent was paid on December 23, 2020, which was outside the five days requirement of the Act.

The tenant testified that they did not have work during the state of emergency and have been doing their best to pay the rent. The tenant stated that because they had no work they ended up retiring to ensure they had a monthly income. The tenant stated that they were able to pay the rent for February, March, and April 2021.

The tenant stated that if the landlord wants them to vacate, if they could have until the end of June 2021, as their wife has just had surgery and they were planning to move.

The landlord submits they are not willing to reinstate the tenancy; however, they are agreeable to work with the tenants and give them to June 30, 2021 to vacate the premise, only on the basis that rent for May and June 2021, will be paid on time.

The tenant confirmed that they will pay rent on time.

### Analysis

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

Based on the testimony of the landlord and the tenant, I find that the tenants were served with a notice to end tenancy for non-payment of rent on December 7, 2021 by posting to the door. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

The tenants did not pay the outstanding rent within the five days and did not apply to dispute the notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on December 17, 2020, which is the effective date of the Notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act. In this case the landlord has agreed to give the tenants until June 30, 2021 to vacate the premise, subject to subsequent rent being paid on time.

I find the landlord is 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. This order will only be enforceable, if the tenants fail to pay rent for May or June 2021 on the date it is due.

Should the tenants pay rent for both May and June 2021, the landlord is entitled to an order of possession effective June 30, 2021. This order may be filed in the Supreme Court and enforced as an order of that Court.

I accept the tenants had difficulties paying the rent due to the current state of the economy and were doing their best, which lead to a early retirement to ensure they had a stable income. However, there was no dispute that the tenants are in rent arrears totalling \$4,825.00. Therefore, I find the landlords are entitled to a monetary for rent owed in the amount of **\$4,825.00**.

I am also satisfied that the tenancy agreement allows the landlord to collect a late payment of rent fee in the amount of \$25.00. This is for a period from September 2020, up to and including January 2021 (5 late payments), I find the landlord is entitled to recover late fees in the amount of **\$125.00**.

I find that the landlord has established a total monetary claim of **\$4,940.00** comprised of unpaid rent, the late fees and the \$100.00 fee paid by the landlords for this application. I grant the landlords an order pursuant to section 67 of the Act, this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The tenants failed to pay rent within five days of receiving the Notice and did not file to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted two separate orders of possession as stated above, and a monetary order in the above noted amount.

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 06, 2021

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Residential Tenancy Branch