



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

On March 3, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession; for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenants were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord testified that the tenancy began on April 1, 2019 as a one-year fixed term tenancy agreement that continued thereafter on a month to month basis. Rent in the

amount of \$1,670.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$835.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants failed to pay the rent owing under the tenancy agreement.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 10, 2021, ("the 10 Day Notice"). The Landlord submitted that the 10 Day Notice was attached to the Tenant's door on February 10, 2021. The Landlord provided a proof of service document.

The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$3,180.00 which was due on February 1, 2021. The 10 Day 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. There is no evidence before me that the Tenants disputed the 10 Day Notice.

The Landlord seeks an order of possession and a monetary order for unpaid rent.

The Landlord submitted that when all the rent was not paid for June, July and August of 2020 the Landlord served the Tenants with a repayment plan for repayment of \$3,610.00 in unpaid rent. The repayment plan is dated September 21, 2020 and requires nine additional rent payments of \$401.11 starting November 1, 2020. The Landlord submitted that the Tenants have not paid the additional rent payments.

In addition to the additional rent payments the Landlord testified that the Tenants failed to pay the rent for the following months:

Month	Rent paid	Rent owing
September 2020	\$0	\$1,670.00
October 2020	\$0	\$1,670.00
November 2020	\$1,830.00	\$0
March 2021	\$0	\$1,670.00
	Balance owing	\$3,180.00

The Landlord requested to amend the application to include additional amounts of unpaid rent incurred while waiting for this hearing. The Landlord requested to include a claim for \$1,670.00 for April 2021 rent and a claim for \$485.00 for May 2021 rent.

The Landlord is also seeking to recover \$100.00 for four \$25.00 non-sufficient fund fees charged by the bank for the months of December 2020, February 2021, March 2021 and June 2021.

The Landlord is also seeking to recover a tenant pay fee of \$5.65 for December, January, February, March and May 2021. The Landlord testified that the Tenants cancelled their preauthorized debit agreement for paying the rent and opted to use a different service which costs \$1.13 per month.

The Landlord provided a copy of a rent ledger showing the rent owing, non-sufficient fund charges /fees and rent payments that were made by the Tenants.

The Landlord is seeking to keep the security deposit of \$835.00 towards the claim for unpaid rent.

In reply, the Tenant A.M. stated that they have not been able to pay the rent due to financial issues. The tenant stated that he was expecting help from the rent bank, however a cheque was not released to him. The Tenant stated that he is trying to obtain credit so that he can pay the rent.

### Analysis

Based on the evidence before me, the testimony of the Landlord and Tenants, and on a balance of probabilities, I find that the Tenants did not pay all the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice, 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 that 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. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

After reviewing the tenancy agreement, the testimony and evidence, I find that the Tenants owe the Landlord rent arrears of \$3,610.00 for unpaid June 2020, July 2020 and August 2020 rent. I also find that the Tenants failed to make the rent payments in accordance with the repayment plan issued by the Landlord.

I also find that the Tenants failed to pay all the rent owing for September 2020, October 2020, March 2021, April 2021, and May 2021. I find that the Tenants owe the Landlord

\$5,335.00 for these months. The Landlord request to amend the application to include the additional two months of unpaid rent is granted since the Tenants are still living in the rental unit.

I find that the Landlord is entitled to recover the cost for the four nonsufficient fund charges amounting to \$100.00 and that the Landlord may recover the tenant pay fee because the Tenants chose to cancel the preauthorized debit payment for rent and chose to use a different service. I award the Landlord \$105.65 for these costs.

I order that the Landlord can keep the security deposit in the amount of \$835.00 in partial satisfaction of the award for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$9,150.65 comprised of \$8,945.00 in unpaid rent for the above-mentioned months, \$105.65 for fees, and the \$100.00 filing fee paid by the Landlord for this hearing.

After setting off the security deposit of \$835.00 towards the award of \$9,150.65, I find that the Landlord is entitled to a monetary order in the amount of \$8,315.65. This monetary 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.

### Conclusion

The Tenants failed to pay the rent due under the tenancy agreement and did not file to dispute the 10 Day Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective two (2) days after service on the Tenants.

I find that the Landlord has established a total monetary claim of \$9,150.65 comprised of unpaid rent, NSF charges, and other fees and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$835.00 towards the award of \$9,150.65, I find that the Landlord is entitled to a monetary order in the amount of \$8,315.65.

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 10, 2021

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Residential Tenancy Branch