



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **MNR-DR, OPR-DR, FFL, MNRL, MNDCL**

### Introduction

This matter proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the Act) and dealt with an Application for Dispute Resolution by the landlords to obtain an Order of Possession based on unpaid rent, to obtain monetary compensation for unpaid rent, and to recover the filing fee paid for the application.

On April 12, 2022, the landlord's application was considered, and the Adjudicator determined that this matter should be adjourned to a participatory hearing. The Adjudicator made findings that the tenants were served in accordance with the Act, with the landlord's Application for Dispute Resolution on March 28, 2022.

The Adjudicator made a further order that the landlords must serve the Notice of Reconvened Hearing and interim decision and all other required documents, upon the tenants within three (3) day of receiving the decision.

The landlord's agent testified that they served each of the tenants by register mail on April 13, 2022. Filed in evidence are copies of the Canada Post tracking numbers.

The Canada Post tracking history shows the tenant RP accepted the package on April 28, 2022. I find the tenant RP was served on April 28, 2022, in accordance with the Act.

The Canada Post tracking history shows the tenant BA, package was returned unclaimed. I find the tenant BA was served on April 18, 2022, five days after it was mailed in accordance with section 89 and 90 of the Act. Refusal or neglect to pickup the package does not override the deemed service provision of the Act.

I had also questioned the landlord's agent regarding their subsequent amendment to their application seeking to recover unpaid utilities. The agent stated that their amendment was not served upon the tenants. As the tenants were not served with the amended application to include unpaid utilities. I decline to hear this portion of the landlords claim. The landlords are entitled to make a new application for unpaid utilities.

### Issues to be Decided

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

Are the landlords entitled to a monetary order?

### Background and Evidence

The tenancy began on November 1, 2021. Rent in the amount of \$1,800.00 was payable on the first of each month. A security deposit of \$800.00 was paid by the tenants.

The landlord's agent testified that the tenants had failed to pay \$200.00 for January 2022 rent and have failed to pay any subsequent rent. The agent stated that the tenants have taken advantage of aging landlords as they are in their eighties and nineties.

The landlord's agent testified that on February 13, 2022, they served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on February 13, 2022, by posting the 3-page document on the door, which was witnessed. The agent stated that the tenants did not pay the rent or dispute the Notice. The landlords seek an order of possession.

The landlords seek a monetary order for the unpaid rent which is comprised of \$200.00 owed for January 2022 and all subsequent rent up to and including July 2022 in the total amount of \$12,800.00.

### Analysis

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

I accept the testimony of the landlords' agent that the tenants were served with the Notice by posting to the door of the rental unit on February 13, 2022, which was witnessed. A copy of the Notice was submitted as evidence. I find the tenants were

deemed served 3 days later on February 16, 2022. 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 have not paid the outstanding rent 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 ended on February 26, 2022, as the date of February 23, 2022, automatically corrected pursuant to section 53 of 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.

I further accept the evidence of the landlord's agent that the tenants failed to pay \$200.00 for January 2022 rent and have failed to pay all subsequent rent. I find the tenants have breached section 26 of the Act. Therefore, I find the landlords are entitled to recover unpaid rent, pursuant to section 55(1.1) of the Act, in the total amount of **\$12,800.00**.

I find that the landlords have established a total monetary claim of **\$12,900.00** comprised of unpaid rent, 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. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Further, should the above amount remain unpaid at the end of the tenancy. The landlord may apply the security deposit toward the above amount, pursuant to section 38(3) of the Act.

### Conclusion

The tenants failed to pay rent 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 landlords are granted an order of possession, and a monetary order for the unpaid rent and the filing fee.

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: July 21, 2022

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Residential Tenancy Branch