



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR; MNR; MNDC, FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent, late fees and loss of revenue; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that he served each Tenant with copies of the Notice of Hearing documents and his documentary evidence at the rental unit on April 19, 2011.

Based on the affirmed testimony of the Landlord's agent, I am satisfied that the Tenants was duly served with the Notice of Hearing documents. Despite being served with the Notice of Hearing documents, the Tenants did not sign into the teleconference and the Hearing proceeded in their absence.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession pursuant to the provisions of Section 55 of the Act?
- Is the Landlord entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?

### **Background and Evidence**

The Landlord's agent gave the following testimony and evidence:

Monthly rent is \$825.00, due the first day of each month. The Tenants did not pay all of the rent due on April 1, 2011. The Landlord issued a Notice to End Tenancy on April 2,

2011, for \$545.00 in unpaid rent. The Notice to End Tenancy was posted to the Tenants' door on April 2, 2011, with a witness present.

Some payments have been made on the outstanding rent and the current balance outstanding is \$75.00, plus a late fee in the amount of \$20.00.

The Tenants paid \$500.00 on April 30, 2011, and the Landlord provided them with a receipt for use and occupancy only. The Landlord's agent looked at his documents again and stated that the Landlord's records show that the \$500.00 was deposited to the Landlord's account on April 23, 2011. He then stated that the Tenants paid \$500.00 on April 20, not on April 30, 2011.

On May 1, 2011, the Tenants did not pay rent when it was due. The Tenants paid a portion of May's rent in the amount of \$250.00, but the Landlord's agent was not sure when that payment was made. The Landlord seeks a monetary order in the amount of \$145.00 (\$75.00 rent arrears, plus \$20.00 late fee, plus \$50.00 filing fee). After referring to his ledger, the Landlord's agent testified that the \$250.00 was paid on May 6, 2011. The Landlord's agent did not provide dates of any other payments that the Tenants made on the arrears.

### **Analysis**

This is the Landlord's application and therefore the onus is on the Landlord to prove its claim.

The Landlord's agent did not provide sufficient evidence that the Tenants owe \$75.00 in unpaid rent, or any money to the Landlord.

Using the Landlord's agent's verbal testimony, and the ledger provided in evidence, the following is an accounting of monies owed by the Tenants:

DATE	AMOUNT PAID	BALANCE DUE (carried forward)
April 2, 2011 (\$20 late fee)	0	\$495.00
April 5, 2011	\$300.00	\$195.00
April 20 or 30, 2011	\$500.00	CR \$305.00
May 1, 2011 (\$825.00 rent)	0	\$520.00
May 2, 2011 (\$20 late fee)	0	\$540.00
May 6, 2011	\$250.00	\$290.00

It is also important to note that the Notice to End Tenancy issued April 2, 2011, indicates a balance owing for rent of \$545.00, which differs from the \$475.00 indicated on the Landlord's ledger.

I explained to the Landlord's agent that based on the documentary evidence and his contradictory verbal testimony, he had not proven his monetary claim and that his application was dismissed.

The Landlord's agent became argumentative and stated that he was not asking for \$290.00, but was only asking for \$75.00, plus late fees and filing fees and therefore I should give it to him. I explained that he had not provided sufficient evidence to prove that the Tenants owed \$75.00 in unpaid rent.

### **Conclusion**

The Landlord's 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: May 16, 2011.

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Residential Tenancy Branch