



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC, MNR, MNSD, OPR

### Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request for an Order of Possession based on Notice to End Tenancy for non-payment her rent, a request for a monetary order for \$1150.00, a request for recovery of the \$50.00 filing fee, and a request to retain the full security deposit towards the claim.

### Background and Evidence

The applicant testified that:

- They came to an agreement with the tenants to rent the rental unit at \$1100.00 per month, and the tenants paid a security deposit of \$550.00.
- The tenants paid the full \$1100.00 rent for the month of September 2011.
- They later came to an agreement with the tenants to allow them to deduct the \$50.00 utility rebate from the rent cheque, and only submit a payment of \$1050.00 per month.

- This was not a reduction of the rent to \$1050.00 per month it was simply an agreement to allow the tenants to deduct the utility rebate prior to submitting their rent payment.
- The tenants concluded that the rent had been reduced by \$50.00 per month, and therefore they reduced their security/pet deposit by \$50.00 per month, without authorization, and deducted this money from their October 2011 rent payment.
- Therefore since they did not have the authority to reduce the security deposit, their October rent payment is \$50.00 short.
- October 6, 2011 they gave the tenants the Notice to End Tenancy for non-payment of rent in the amount of \$100.00; however they now realize that there was actually only \$50.00 outstanding.
- That \$50.00 is still outstanding, and therefore they request that an Order of Possession be issued for as soon as possible.
- The tenants have also failed to pay the full November 2011 rent. They only paid \$700.00 and therefore they still owe \$350.00. The tenants prorated the amount, again without the authority to do so, because they have decided to vacate the rental unit on November 20, 2011.

The applicants are requesting an Order of Possession for as soon as possible and a monetary order as follows:

October 2011 rent outstanding	\$50.00
November 2011 rent outstanding	\$350.00
Filing fee	\$50.00
Total	\$450.00

The tenants testified that:

- The landlords agreed that rather than them paying \$1100.00 rent to the landlords, and then the landlords returning \$50.00 to them to cover the utility rebate, the landlords would allow them to just pay \$1050.00 per month.

- Therefore since they were now only paying \$1050.00 per month to the landlords, it was their belief that they had overpaid the security/ deposit, because the landlord can only collect 1 month's rent total for security/pet deposit, and since the landlord had collected \$1100.00 they deducted the \$50.00 overpayment off of their October 2011 rent.
- On October 6, 2011 the landlord sent them a Notice to End Tenancy for non-payment of rent; however since they believed the full rent had been paid they contacted the Residential Tenancy Branch by e-mail to attempt to dispute the notice however no application was ever filed because before they had filed an application the landlords served them with notice of this hearing.
- On October 20, 2011 they subsequently gave the landlords one month notice that they would be vacating the rental unit on November 20, 2011, and therefore they have prorated the rent for the month of November 2011 and paid the landlord \$700.00.

The tenants therefore believe that the order possession should be denied as it is their belief that there is no rent outstanding for the month of October 2011, and the landlords monetary claim should also be denied because they have paid the full rent up to the date for which they have given notice.

### Analysis

It is my finding that the landlords have shown that the rent for this rental unit is \$1100.00 per month.

The landlords did agree to allow the tenants to only pay \$1050.00 per month rather than pay the full \$1100.00 and then have him pay back the \$50.00 utilities rebate, however this is not a reduction in the rent in the rent, it is simply allowing the tenants to deduct the utility rebate before paying the rent.

Therefore the allowable combined security/pet deposit remains \$1100.00 and the tenants did not have the right to deduct \$50.00 off the rent.

Therefore the landlords Notice to End Tenancy is a valid notice even though the amount of outstanding rent was incorrect.

However I am not willing to issue an Order of Possession based on that Notice to End Tenancy, because the landlord has accepted rent for a portion of November 2011, and by doing so this tenancy has been reinstated and the landlord can no longer rely on the previous Notice to End Tenancy to end this tenancy.

I will however allow the landlords claim for the \$50.00 outstanding rent for the month of October 2011, and I also allow the claim for the \$350.00 outstanding rent for the month of November 2011, because any Notice to End Tenancy given in the month of October 2011 is valid for the end of November 2011. Therefore the tenants are liable for the full rent for the month of November 2011.

I will also allow the landlords request for recovery of the filing fee, because I have allowed a portion of the landlords claim.

### Conclusion

The request for an Order of Possession is denied.

I have issued a monetary order in the amount of \$450.00.

The landlord has withdrawn the request for an order against the security deposit at this time.

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: November 09, 2011.

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Residential Tenancy Branch