



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession and a Monetary order for unpaid rent. The tenants did not appear at the hearing. The landlord provided four registered mail receipts as proof each of the named tenants were served with the hearing documents via registered mail sent to them at the rental unit on May 27, 2013. The landlord confirmed that the tenants are still in possession of the rental unit but have not picked up the registered mail.

Section 90 of the Act deems a person to have received documents five days after mailing so that a person cannot avoid service by refusing to accept or pick up their mail.

In light of the above, I found the tenants have been sufficiently served with notice of this hearing in a manner that complies with the Act and I proceeded to consider the landlord's Application without the tenants present.

The landlord requested that the application be amended to include loss of rent for the month of June 2013. Having heard the tenants are still in possession of the rental unit and the landlord received a partial payment of rent for the month of June 2013 I was satisfied the tenants have benefited from use of the rental unit in June 2013. Therefore, I found the landlord's request to include loss of rent for June 2013 to be non-prejudicial and I have amended the application accordingly.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

On March 1, 2013 the landlord and one of the named tenants executed a written tenancy agreement and addendum indicating that starting April 1, 2013 the tenant would pay rent of \$1,350.00 starting April 1, 2013 for use of the entire house. The landlord received \$585.00 of the \$675.00 security deposit.

The landlord testified that in entering the tenancy agreement she understood that the house would be occupied by the tenant and three other occupants. Rather, than receiving one payment of \$1,350.00 the rent was divided into four and multiple cheques were sent to the landlord by the Ministry. As the landlord received and accepted rent on behalf of the occupants the landlord has recognized all four occupants of the house as tenants.

The landlord testified that three cheques of \$337.50 were received for the month of April 2013 leaving a balance outstanding of \$337.50. The landlord also received three payments of \$337.50 for the month of May 2013 leaving a balance outstanding of \$337.50.

On May 13, 2013 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) and personally served it upon one of the tenants/adult occupants living in the house (referred to by initials RR) in the presence of a witness. After serving the 10 Day Notice the tenants did not pay the outstanding rent.

One cheque in the amount of \$337.50 was received from the Ministry for the month of June 2013.

In addition to an Order of Possession, the landlord is seeking to recover unpaid rent for the months of April and May 2013 as well as loss of rent for the month of June 2013.

Documentary evidence provided for this hearing included copies of: the tenancy agreement and addendum; the 10 Day Notice; a signed Proof of Service of the 10 Day Notice; and, registered mail receipts.

### Analysis

Having heard the landlord received rent payments equal to one-fourth of the monthly rent on behalf of three occupants living in the rental unit, I am satisfied the landlord completed documentation and that documentation was submitted by the occupants to the Ministry in recognition of a tenancy agreement between the parties, even if it was a

verbal tenancy agreement. Therefore, I find that all four persons named on this decision are tenants.

It is important to note that all co-tenants are jointly and severally liable for amounts payable to the landlord under the Act and tenancy agreement.

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to serve a 10 Day Notice to End Tenancy. Acceptable methods of serving a 10 Day Notice include serving the tenant in person or by giving it to an adult person that apparently resides with the tenant at the rental unit.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord sufficiently served a 10 Day Notice upon the tenants on May 13, 2013 when it was given to RR. Since the outstanding rent was not paid and the 10 Day Notice was not disputed within five days of giving the 10 Day Notice to RR I find the tenancy ended on May 23, 2013. Therefore, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for April 2013 in the amount of \$337.50 and unpaid rent for May 2013 in the amount of \$337.50. Having heard the tenants are still in possession of the rental unit I further award the landlord loss of rent for the month of June 2013 in the amount of \$1,012.50 [\$1,350.00 less partial payment of \$337.50].

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: April 2013	\$ 337.50
Unpaid Rent: May 2013	337.50
Loss of Rent: June 2013	1,012.50
Filing fee	50.00
Less: security deposit	<u>(585.00)</u>
Monetary Order	\$1,152.50

The landlord must serve the Monetary Order upon the tenants and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,152.50 to serve upon the tenants and enforce as necessary.

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 18, 2013

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Residential Tenancy Branch

