



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. At the commencement of this hearing, the female landlord requested permission to conduct the hearing with a Punjabi speaking arbitrator, who would then be asked to translate the proceedings into English should the tenant participate in the hearing. I advised the landlords that they were responsible for securing a translator, if one were necessary, and that the hearing could not be conducted in Punjabi. The female landlord had sufficient facility in the English language to represent her and her husband, the male landlord, at this hearing. The female landlord also agreed to translate any questions I might have into Punjabi, so as to ensure that her husband had an opportunity to introduce sworn oral testimony.

The landlords testified that the male landlord handed the tenant a copy of their dispute resolution hearing package on July 12, 2013, the same date that the Notice of Hearing was produced by the Residential Tenancy Branch. I am satisfied that the landlords served the tenant with this package in accordance with the *Act*.

### Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent based on the 10 Day Notice of June 25, 2013? Are the landlords entitled to a monetary award for unpaid

rent? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

This periodic tenancy began on July 1, 2012. Monthly rent was set at \$700.00, payable in advance on the first of each month. The landlords continue to hold the \$375.00 security deposit paid by the tenant on or about July 1, 2012.

The landlords' application for a monetary award of \$2,800.00 included unpaid rent of \$700.00 for each of April, May, June and July 2013. The landlords testified that the tenant has not paid rent for any of the above months and has yet to pay monthly rent owing for August 2013.

The landlords entered into written evidence a copy of their 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 25, 2013. Their only other written evidence was a copy of a witnessed Proof of Service Document signed by the male landlord. This document stated that on June 19, 2013 at 8:00 p.m. the male landlord personally handed the tenant the 10 Day Notice. At the hearing, the male landlord gave sworn testimony that he handed the tenant the 10 Day Notice on June 19, 2013; his wife also attested to this testimony. The female landlord testified that the landlords had served two 10 Day Notices to the tenant since he stopped paying his rent in April 2013.

#### Analysis – Landlord's Application for an Order of Possession

The *Act* allows me to correct certain types of minor errors that may arise during the course of a dispute resolution hearing. However, this authorization only extends to the correction of relatively minor errors such as the spelling of names or a correction of an effective date on a notice to end tenancy.

At the hearing, I advised the landlords that I could not accept that the landlords served the 10 Day Notice, six days before this document was created. Based on the written and sworn oral testimony of the male landlord, I cannot accept that the landlords served a June 25, 2013, 10 Day Notice to the tenant on June 19, 2013. These errors in dates renders the 10 Day Notice so flawed that I find that it is of no legal effect. For this reason, I dismiss the landlords' 10 Day Notice of June 25, 2013, without leave to reapply.

The landlords are at liberty to issue a new 10 Day Notice to the tenant.

### Analysis – Landlords’ Application for a Monetary Order

Based on the undisputed sworn testimony of the landlords, I accept that rent remains owing for each of April, May, June and July 2013. I issue a monetary award of \$700.00 in the landlords’ favour for each of the four months identified in the landlords’ application for dispute resolution.

I allow the landlords to retain the tenant’s \$375.00 security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlords have been successful in their application, I allow them to recover their \$50.00 filing fee from the tenant.

### Conclusion

I dismiss the landlords’ application for an Order of Possession based on the 10 Day Notice of June 25, 2013, without leave to reapply. I issue a monetary Order in the landlords’ favour under the following terms, which allows the landlords to recover unpaid rent owing from April through July 2013 and their filing fee for this application and to retain the tenant’s security deposit:

| <b>Item</b>                                 | <b>Amount</b>     |
|---|-------------------|
| Unpaid April 2013 Rent                      | \$700.00          |
| Unpaid May 2013 Rent                        | 700.00            |
| Unpaid June 2013 Rent                       | 700.00            |
| Unpaid July 2013 Rent                       | 700.00            |
| Less Security Deposit                       | -375.00           |
| Recovery of Filing Fee for this Application | 50.00             |
| <b>Total Monetary Order</b>                 | <b>\$2,475.00</b> |

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: August 19, 2013

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Residential Tenancy Branch

