



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR, MNR, MNDC, MNSD, FF (Landlord's Application)  
CNR, ERP, MNR, MNSD (Tenants' Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord and the Tenant.

The Landlord applied for an Order of Possession and a Monetary Order for: unpaid rent; money owed or compensation for loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenants' security deposit; and to recover the filing fee. The Tenant applied to cancel the notice to end tenancy, for the cost of emergency repairs, for the return of their security deposit, and for the Landlord to make emergency repairs for health or safety reasons.

The Landlord appeared for the hearing and provided affirmed testimony through a Translator. The Landlord also provided written evidence in advance of the hearing. There was no appearance for the Tenants named on the Landlord's Application during the 15 minute duration of the hearing despite the Tenants being provided with this same date and time to hear their Application.

The Landlord testified that he made his Application on February 12, 2015 and sent the Tenants a copy of his Application, the Notice of Hearing documents and his written evidence by registered mail to the Tenants' rental unit.

The Landlord provided the Canada Post tracking number in oral testimony and this was recorded on the inside cover of the Landlord's file. The Landlord testified that the Canada Post tracking website shows that one of the Tenants signed for the documents on February 24, 2015. As a result, I find that the Landlord served the Tenants with the required documents for this hearing in accordance with Section 89(1) (c) of the Act.

I have carefully reviewed the evidence of the Landlord as well as the written evidence submitted prior to the hearing in this decision as follows.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

- Is the Landlord entitled to keep all of the Tenants' security deposit in partial satisfaction of the Landlords' claim for unpaid rent?

### Background and Evidence

The Landlord testified that this tenancy began on April 1, 2014 on a month to month basis. Monthly rent is payable under the written tenancy agreement in the amount of \$1,650.00 due on the first day of each month. The Tenants paid an \$825.00 security deposit at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenant only paid \$1,600.00 for October, 2014 rent and \$360.00 for November 2014 rent, leaving an outstanding balance for these two months of **\$1,340.00**. The Landlord testified that Tenants have failed to pay full rent for December 2014 and for January, February and March 2015 rent. The Landlord testified that the Tenants are now in current rental arrears for a total amount of **\$7,940.00** which he now seeks to recover.

The Landlord testified that on February 8, 2015, the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") for the outstanding balance of rent which at the time was \$6,290.00. The Notice was provided as evidence and shows an effective date of vacancy of February 20, 2015. The Landlord also provided a Proof of Service document which was signed by a witness who observed this method of service of the Notice. The Landlord now seeks an Order of Possession for the rental suite.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement whether or not the landlord complies with the Act.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice, I find that the contents complied with the requirements of Section 52 of the Act. I also accept that the Tenants were served with Notice by posting it to their door in the presence of a witness who verified this method of service.

Section 90(c) of the Act stipulates that a document served by attaching it to the door is deemed to have been received three days later. Therefore I find that the Landlord served the Notice on February 8, 2015 and the Tenants are deemed to have received the Notice on February 11, 2015. Therefore, pursuant to Section 53 of the Act, the vacancy date on the Notice is now corrected to February 22, 2015.

While the Tenant did make an Application within the allowable time limits to dispute the Notice, the Tenants named in the Landlord's Application failed to appear for the hearing to dispute the

Landlord's testimony and provide evidence as to why the rent was not paid. As a result, I dismiss the Tenant's Application.

As a result, I accept the Landlord's undisputed testimony and written evidence that the Tenants owe the Landlord **\$7,940.00** in unpaid rent. As the effective date of the Notice has now passed, the Landlord is also entitled to an Order of Possession which is effective two days after service on the Tenants.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the **\$100.00** filing fee for the cost of the Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$8,040.00**.

As the Landlord already holds **\$825.00** in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded **\$7,215.00**.

#### Conclusion

The Tenants have breached the Act by not paying rent payable under the tenancy agreement. Therefore, I grant the Landlord an Order of Possession effective **two days after service on the Tenants**. This order must be served to the Tenants and may then be filed and enforced in the Supreme Court as an order of that court if the Tenants fail to vacate the rental unit.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$7,215.00**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court. Copies of both orders are attached to the Landlord's copy of this decision.

As the Tenant failed to appear for the hearing and prove the Application, I hereby dismiss the Tenant's Application in its entirety **without** leave to re-apply.

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: March 06, 2015

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Residential Tenancy Branch

