



# 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 was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

At the outset of the hearing the parties advised that the tenants are no longer residing in the rental unit, and therefore, the landlords withdraw their application for an Order of Possession.

### Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords permitted to keep all or part of the security deposit?

### Background and Evidence

The undisputed evidence before me shows that this tenancy started on July 01, 2014 for a fixed term tenancy of one year. Rent for this unit was \$1,050.00 per month due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$525.00 on June 02, 2014. The tenancy agreement shows that the tenants were co-tenants named on the tenancy agreement and each tenant has signed the agreement.

The landlords testified that the tenants were \$50.00 short on their rent for January, 2015. In February the tenants did not pay all the rent due leaving an unpaid balance of \$1,050.00. The landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on February 02, 2015 in person. The Notice indicated that rent of \$1,050.00 was due for February and \$50.00 due for January. The Notice has an effective date of February 12, 2015. The Notice informed the tenants that they had five days to either pay the outstanding rent or file an application to dispute the Notice. The tenants failed to pay the rent due and vacated the rental unit on February 08, 2015.

The landlords testified that the tenant JZ agreed in writing that the landlords could keep \$262.50 of the security deposit. The balance of the security deposit of \$262.50 was returned to the other tenant SE. the landlords seeks an Order to keep the security deposit of \$262.50 which JZ agreed they could keep.

The landlords seek a Monetary Order to recover the unpaid rent of \$1,100.00 and the cost incurred to send evidence by registered mail of \$25.10. The landlords also seek to recover the filing fee of \$50.00.

The SE testified that it was JZ who failed to pay the \$50.00 for January, 2015. The tenants had an agreement that SE would pay \$500.00 a month and JZ would pay \$550.00 per month. Each tenant paid half the security deposit each. SE testified that because JZ could not pay her share of the rent they both vacated the rental unit on

February 08, 2015 and no rent was paid for February. SE testified that she did not want to vacate but could not find another single roommate to share the tenancy. In the end she found two tenants to take over the lease from March 01, 2015.

JZ testified that she agreed that \$50.00 was owed for January and no rent was paid for February.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords' claim for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

*26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I also refer the parties to the Residential Tenancy Policy Guidelines #13 which provides guidance on issues surround co-tenants. Part of this guideline states:

'Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.'

I am satisfied from the undisputed evidence before me that the tenants failed to pay all the rent due for January, 2015 of \$50.00 and for February, 2015 of \$1,050.00.

Consequently, I find the landlords are entitled to recover the unpaid rent of **\$1,100.00**.

The landlord has applied to recover the cost for sending registered mail to the tenants; however; there is no provision under the *Act* for costs of this nature to be awarded to a party. This section of the landlords' claim is therefore dismissed.

As the landlords' claim has merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*.

As the tenant JZ agreed in writing that the landlord can keep \$262.50 of the security deposit I am not required to make a decision in this matter. The balance of the security deposit of \$262.50 was returned to the other tenant SE. I have therefore deducted the amount of \$262.50 which JZ agreed the landlords could keep, from the outstanding rent. A Monetary Order has been issued to the landlords pursuant to s. 67 and 72(1) of the *Act* as follows:

Unpaid rent	\$1,100.00
Filing fee	\$50.00
Less security deposit	(-\$262.50)
Total amount due to the landlords	\$887.50

A Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act* the tenants must therefore apportion among themselves the amount they each owe to the landlords.

Conclusion

For the reasons set out above, I grant the landlords a Monetary Order in the amount of **\$887.50**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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 31, 2015

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Residential Tenancy Branch

