



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC O FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on May 16, 2016. The Landlords filed seeking an Order of Possession based on a mutual agreement to end tenancy and a Monetary Order for: unpaid rent and/or utilities; to keep the security and/or pet deposit; for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement; for other reasons and to recover the cost of the filing fee.

The Landlords filed an amendment to their application on May 31, 2016 seeking an Order of Possession for unpaid rent and utilities.

Section 1 of the *Act* defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement.

The hearing was conducted via teleconference and was attended by both Landlords and the Landlords' Agent. Each person gave affirmed testimony and the female Landlord requested their Agent speak on behalf of both Landlords.

The Agent met the definition as a landlord, pursuant to section 1 of the *Act*; therefore, all submissions have been recorded as being from the Landlord(s). In addition, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The Landlord testified the Tenant was personally served with copies of their application, the notice of hearing documents, and the 10 Day Notice to end tenancy on May 16, 2016. The Landlord submitted the Tenant was personally served with a copy of their amended application on June 1, 2016.

No one was in attendance on behalf of the Tenant. Based on the undisputed submissions of the Landlords I find the Tenant was sufficiently served notice of this hearing and I continued to hear the undisputed evidence of the Landlords, in absence of the Tenant.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to an Order of Possession?
2. Have the Landlords proven their claim for a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a month to month tenancy with a co-tenant which began on January 1, 2016. Rent of \$1,500.00 was due on or before the first of each month and on January 1, 2016 the Tenant(s) paid \$750.00 as the security deposit.

The Landlord testified the Tenant failed to pay \$800.00 rent and \$155.00 for utilities that were due April 1, 2016. On May 1, 2016 the Landlord and Tenant signed a Mutual Agreement to End a Tenancy agreeing to end the tenancy effective June 1, 2016.

On May 16, 2016 the Landlords served the Tenant with a 10 Day Notice to end tenancy which listed \$800.00 for unpaid rent that was due April 1, 2016 and \$155.00 for unpaid utilities that were due April 1, 2016.

On the application for Dispute Resolution in the Details of Dispute section the Landlord indicated their application was for \$800.00 for April 2016 rent; \$750.00 for May 2016 rent; \$155.50 for unpaid utilities; Apr – May utilities \$200.00; and recover the filing fee of \$100.00.

The Landlords submitted that the Tenant continues to occupy the rental unit so they wish to amend their application to include use and occupancy for June 2016 along with their request for an Order of Possession.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or

their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 62 (2) of the Act stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

Section 44(1)(c) of the Act stipulates that a tenancy ends on the date the landlord and tenant agree in writing to end the tenancy.

In this case the parties signed a written Mutual Agreement to End a Tenancy agreeing to end the tenancy effective **June 1, 2016**, pursuant to section 44 of the Act.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends ten days after they receive the Notice.

In this case the Tenant received the 10 Day Notice on May 31, 2016 and did not file an application to dispute the Notice. Accordingly, the effective date of the 10 Day Notice was **June 10, 2016**, pursuant to section 46 of the Act.

After consideration of the totality of the evidence before me I find this tenancy ended as per the Mutual Agreement to End Tenancy which listed the earliest effective date, pursuant to section 62 of the Act. That is to say, this tenancy ended as of the effective date of the Mutual Agreement on **June 1, 2016**, pursuant to sections 44 and 62 of the Act. Accordingly, I grant the Landlords an Order of Possession.

The Landlords have been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Under section 26 of the Act, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act. A tenant is not permitted to withhold rent without the legal right to do so.

The written tenancy agreement does not provide utilities included in the rent. Therefore, the Tenant is required to pay for the cost of utilities.

In regards to the \$200 claimed for Apr – May utilities as listed on the application for Dispute Resolution, I find the Landlord submitted insufficient evidence to prove the

Tenant was served a demand for those utilities. Accordingly, I dismiss the claim for \$200.00 utilities, without leave to reapply.

I accept the undisputed evidence the Tenant has failed to pay rent of \$800.00 that was due April 1, 2016 plus \$155.00 for utilities that were due April 1, 2016 as per the 10 Day Notice to end tenancy. It should be noted that the \$155.5 amount claimed for April 2016 utilities on the application for Dispute Resolution is different than the \$155 amount listed on the 10 Day Notice. As such, I will be considering the \$155 amount listed on the 10 Day Notice as that is the legal demand for payment.

In addition, I accept the undisputed evidence the Tenant continues to occupy the rental unit and did not pay the required \$750.00 for May 2016 rent as per the Landlords' application for Dispute Resolution. Accordingly, I find the Landlords submitted sufficient evidence to prove their claim for April and May 2016 unpaid rent plus unpaid utilities in the amount of **\$1,705.00** (\$800.00 + \$750.00 + \$155.00).

As noted above, this tenancy ended **June 1, 2016**, in accordance with the Mutual Agreement to End Tenancy. Therefore I find the Landlords are seeking money for use and occupancy and loss of rent for June 2016, not rent. I approve the Landlords' requests to consider awarding them compensation for June 2016 given the delay from the time the Landlords filed their application on May 16, 2016 to this June 15, 2016 hearing date. In addition, it is reasonable to conclude that the Tenant would be expected to pay for their occupation of the rental unit until such time as the Landlords regain possession.

The undisputed evidence was the Tenant continues to occupy the rental unit. The Landlords will not regain possession of the rental unit until after service of the Order of Possession. Once the Landlords regain possession they will need to ready the unit and find a replacement tenant. Therefore, I conclude the Landlords are entitled to payment for use and occupancy and any loss of rent for the entire month of June 2016 in the amount of **\$1,500.00**, the rent amount as per the tenancy agreement.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

**Monetary Order** – I find this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$750.00 deposit since January 1, 2016.

Unpaid April & May 2016 Rent & Utilities	\$1,705.00
Use and Occupancy & loss of rent for June 2016	1,500.00
Filing Fee	<u>100.00</u>
<b>SUBTOTAL</b>	<b>\$3,305.00</b>
<b>LESS:</b> Security Deposit \$750.00 + Interest 0.00	<u>-750.00</u>
<b>Offset amount due to the Landlords</b>	<b><u>\$2,555.00</u></b>

The Tenant is hereby ordered to pay the Landlords the offset amount of \$2,555.00 forthwith.

In the event the Tenant does not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **\$2,555.00** which may be enforced through Small Claims Court upon service to the Tenant.

### Conclusion

The Landlords were successful with their application and were granted an Order of Possession and a monetary award of \$3,305.00. The monetary award was offset against the Tenant's \$750.00 security deposit leaving a balance owed to the Landlords of \$2,555.00.

This decision is final, legally binding, and 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 15, 2016

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Residential Tenancy Branch