



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL OPR

### Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55 of the *Act*; and
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:20 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that he had served the tenants individually with the Notice of Dispute Resolution Proceeding and served his submitted evidence on the tenants.

The landlord testified that he served each of the tenants individually with the notice of this hearing by Canada Post registered mail to the tenants at the rental unit where they were still residing at that time. In support of his testimony, the landlord submitted into documentary evidence two registered mail receipts with tracking numbers, which I have noted on the cover sheet of this Decision. The landlord confirmed that the Canada Post

tracking report showed that both packages had been delivered to the tenants on July 25, 2019.

As such, I find that the tenants were served with the notice of this hearing in accordance with section 89 of the *Act*.

The landlord testified that he served his evidence to the tenants through UPS courier service and that the package was delivered to the tenants on July 31, 2019. In support of his testimony the landlord submitted into documentary evidence a delivery confirmation from the courier company.

The landlord testified that he served a second evidence package on the tenants on August 1, 2019 by posting it to the rental unit door. In support of his testimony, the landlord submitted into documentary evidence a photograph of the package attached to the door.

As such, I find that the tenants were served with the landlord's evidence in accordance with section 88 of the *Act*.

#### Preliminary Issue – Order of Possession Claim Dismissed

At the outset of the hearing, the landlord confirmed that the tenants vacated the rental unit around August 4, 2019. As the landlord has regained possession of the rental unit, I dismiss the landlord's application for an Order of Possession as it is now moot.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence confirming the following details pertaining to this tenancy:

- This tenancy began on April 1, 2019 as a fixed-term tenancy scheduled to end on April 1, 2020.
- Monthly rent of \$1,300.00 was payable on the first of the month.
- At the beginning of the tenancy, the tenants paid a security deposit of \$650.00, which continues to be held by the landlord.

The landlord testified that he obtained an Order of Possession for the rental unit through a prior arbitration hearing, on the basis of a 10 Day Notice to End Tenancy for Unpaid Rent. He testified that the tenants failed to pay rent for June 2019 and July 2019, and vacated the rental unit around August 4, 2019 after being served with the Order of Possession. The landlord testified that the tenants have failed to provide him with a forwarding address.

### Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

No evidence was presented at the hearing that the tenants had a right under the *Act* to deduct all or a portion of the rent.

Therefore, based on the undisputed testimony and evidence of the landlord regarding the terms of the tenancy agreement and the evidence before me, on a balance of probabilities, I find that the tenants were obligated to pay monthly rent in the amount of \$1,300.00 on the first of the month, and that the tenants failed to pay rent in full when it was due for the months of June and July 2019.

In light of the above, I find that the landlord is entitled to a monetary award in the amount of \$2,600.00 for rental arrears owed by the tenants.

As the landlord continues to hold the tenants' \$650.00 security deposit, I order that the landlord retain this deposit in partial satisfaction of the monetary award owed by the tenants.

Therefore, in accordance with section 72 of the *Act*, I set-off the amount of the monetary award owed by the tenants to the landlord against the amount of the security deposit held by the landlord.

In summary, I issue a Monetary Order of \$1,950.00 in favour of the landlord in satisfaction of rent owed by the tenants for June and July 2019.

### Conclusion

I order the landlord retain the security deposit of \$650.00 in partial satisfaction of the landlord's entitlement to a monetary award for rental arrears.

For the remaining amount of the monetary award owed to the landlord, I issue a Monetary Order in the landlord's favour against the tenants in the amount of \$1,950.00, to be served on the tenants. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's claim for an Order of Possession is dismissed as the landlord already received an Order of Possession through a prior arbitration decision and the landlord has regained possession of the rental unit.

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 30, 2019

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Residential Tenancy Branch