



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNR

### Introduction

This hearing dealt with an application by the landlord seeking monetary relief related to alleged loss due to rental arrears over the period of 2001 to 2009.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

The tenants did submit some documentary evidence in response to this application; however, the tenants did not submit this evidence to the Residential Tenancy Branch in the required time frame or provide a copy to the landlord. As a result, this evidence has not been reviewed or considered as part of this decision.

### Issue(s) to be Decided

Has the landlord established that the tenants failed to pay outstanding rent spanning from 2001 to 2009 in the amount of \$2,930.00?

### Background and Evidence

This tenancy began on March 25, 1997 for the monthly rent of \$750.00 and a \$375.00 security deposit. The rent was due on the first of each month.

The landlord provided a typed account of all the tenants alleged rent payments and the accumulating rental arrears beginning in October 2001 until the tenancy ended in June 2009. The landlord stated that the ledger was produced based on all the rental records and receipts the landlord had. The landlord did not provide a copy of these records as part of this application.

The landlord testified that there were multiple verbal discussions with the tenants over the course of the tenancy but no written warning letters were issued and no notices to end tenancy were ever issued. The landlord stated that they have always expected the

tenants to pay the arrears but did not formally pursue this application until the limitation period was approaching.

The tenants deny the landlord's claim that they owe rental arrears in the amount of \$2,930.00. The tenants stated that they never received a notice to end tenancy during the tenancy which would have provided them an opportunity to dispute the landlord's claim at the time. The tenants also argued that they have no way to confirm the validity of the account ledger submitted by the landlord since no supporting documents were provided.

The tenants stated that the landlord did not provide anything in writing when they ended their tenancy about rental arrears and they have not heard anything from the landlord in the last 15 months and as a result most of their own records are gone.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord has the burden of proof in this application and must also satisfy me that steps were taken to mitigate or minimize the loss. I am not satisfied that the landlord has established this claim or mitigated their loss. The landlord allegedly allowed the tenants to continuously breach their tenancy agreement and never took any steps to deal with the issue. The landlord had the option of issuing a notice to end tenancy to stop further loss of rent. In addition, once the tenancy ended the landlord did not diligently pursue the loss of rent or give the tenants any notice that they would now be pursuing the tenants for loss of rent. In essence, the landlord is not entitled to compensation that could have been reasonably avoided had the landlord exercised their rights under the legislation.

The landlord has also failed to provide verification of the monetary claim being sought since the original records on which the landlord created the account ledger were not provided as evidence. In the absence of this documentation I agree with the tenants' argument that the account ledger cannot be verified.

I find that the landlord has not provided sufficient evidence to establish this monetary claim due to unpaid rent.

Conclusion

The landlord's application is dismissed without leave to re-apply as I have determined that the landlord did not meet the burden of proof required to establish this monetary claim.

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: January 26, 2011.

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Residential Tenancy Branch