



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and her agent and both tenants.

During the hearing the parties agreed the tenants had moved out of the rental unit before the end of January. As such, there is no longer a need for an order of possession and I amend the landlord's Application to exclude any matters related to possession.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on October 12, 2010 for a 1 year fixed term tenancy beginning on October 2, 2010 for the monthly rent of \$850.00 plus ½ utilities due on the 1<sup>st</sup> of each month and a security deposit of \$425.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 10, 2011 with an effective vacancy date of January 15, 2011 due to \$850 in unpaid rent and \$300.00 in unpaid utilities.

Both parties agree that the tenants failed to pay the full rent owed for the month of January 2011 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on January 10, 2011.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

The tenants testified that they did not pay rent as they had requested the landlord repair many items throughout the unit and the landlord had failed to make these repairs. The landlord testified that all repairs requested were made.

The landlord's agent testified that the tenants had been talking for some time that they were going to move out and that after the 10 Day Notice to End the Tenancy was issued she was informed by the tenants on January 29, 2011 that they would be moving out on January 30, 2011.

### Analysis

I have reviewed all evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on January 13, 2011 and the effective date of the notice is amended to January 23, 2001, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed.

Despite the concerns the tenants raised in the hearing Section 26 of the *Act* requires a tenant to pay the rent when it is due according to the tenancy agreement regardless of whether the landlord has breached the *Act*, regulation or tenancy agreement. As such, I find the tenants are responsible to pay the rent for January 2011.

However, despite the landlord's claim to include \$850.00 for the month of February 2011, I find that the tenancy ended prior to the start of February 2011 based, at least in part, on the landlord's issuance of a 10 Day Notice to End Tenancy for Unpaid Rent and as such no rent was due on February 1, 2011.

I therefore dismiss this portion of the landlord's Application as the landlord had only applied for unpaid rent. She had not applied for damage or loss resulting from a violation of the *Act*, regulation or tenancy agreement and as such remains at liberty to file an Application for Dispute Resolution seeking remedy for any violations.

As to the landlord's claim for \$300.00 for utilities, the landlord has failed to provide any evidence in the forms of bills or receipts for utilities that she is claiming and has therefore failed to establish the value of any utilities owed. I dismiss this portion of the landlord's application.

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$900.00** comprised of \$850.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$425.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$475.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: February 10, 2011.

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Residential Tenancy Branch