



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNR, RP, OPR, MNDC, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and an order that the landlords perform repairs and a cross-application by the landlords for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. All parties were represented at the conference call hearing.

In this decision where “landlords” in its plural form appears, it refers to both landlords and where “landlord” in its singular form appears, it refers to the landlord M.N. who appeared at the hearing. The same holds true for the singular and plural forms of “tenant,” the singular form referring to the tenant T.C. who appeared at the hearing.

### Issue to be Decided

Is the landlord entitled to an order of possession?  
Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The facts in this paragraph are not in dispute. The tenancy began on July 1, 2010 and was set to continue for a fixed term ending on June 30, 2011. Rent was set at \$1,800.00 per month and the tenants paid a \$900.00 security deposit and a \$900.00 pet deposit. The tenants failed to pay rent in the months of February and March 2011. The tenants agreed that the landlords were entitled to an order of possession and a monetary order for unpaid rent for February and March.

The landlords seek to recover loss of income for the balance of the fixed term. At the hearing the landlord advised that she has not yet begun advertising the rental unit although she was aware on approximately March 14 that the tenants would be vacating at the end of that month, and that she may move into the rental unit before June 30 but

was not yet sure. I asked the landlord if she would like to withdraw her claim as she did not yet know what her loss of income would be, but she chose to pursue the claim.

The landlords seek to recover the cost of replacing the hardwood floor in the rental unit. The parties agreed that in December, the refrigerator was leaking and that on December 26, the tenants advised the landlords of the leak. The landlords' agent attended at the rental unit immediately after the landlords were notified of the leak and was able to stop the water within half an hour. The landlord claimed that the tenant told her that the water had been there for approximately 3 days. The landlord stated that the water had travelled some 30 feet down the hallway and had also affected areas of the living room. The landlords claim that their repairperson advised that he had never seen a crack such as the one on the filter which caused the leak and the landlords theorize that the tenants had in some way interfered with or damaged the filter to cause the leak. The landlords claim that the damage to the flooring throughout the unit would not have been as severe had the tenants immediately notified them of the leak rather than waiting for several days. The landlords fear that all of the flooring will require replacement as the type of flooring currently installed is no longer carried by suppliers. The landlord acknowledged that she had not been in the rental unit since the damage occurred in December.

The tenant denied that he or anyone in his family had interfered with or damaged the refrigerator filter and testified that while there may have been some water present in the days before the leak was reported to the landlords, it was not significant. The tenant testified that the tile under the refrigerator did not extend all the way to the wall and that this deficiency allowed the water to migrate throughout the house instead of pooling. The tenant testified that the flooring has almost entirely recovered from the incident and that there may be several boards which need to be replaced, but there is no indication that there is any problem with most of the flooring.

### Analysis

As the tenants agreed that the landlord is entitled to an order of possession, I dismiss their claim in its entirety.

Pursuant to the agreement of the parties, I grant the landlord an order of possession. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the tenants agreed that they are in arrears, I award the landlords \$3,600.00 in unpaid rent for February and March. I dismiss the landlords' claim for loss of income for the balance of the lease term. The landlords bear the burden of proving the loss and also of proving that they have made reasonable attempts to mitigate their losses. The

landlord acknowledged that she has not yet started advertising and I find that they have not acted reasonably to minimize anticipated losses, nor have they proven that they will be unable to re-rent the unit for the balance of the term as no attempt has been made to do so.

I also dismiss the landlords' claim for the cost of replacing the flooring. I find that the landlords have failed to prove that the floors are irreparably damaged and I am also not satisfied that whatever damage exists was caused or exacerbated by the tenants.

I find that the landlords are entitled to recover the filing fee paid to bring this application and I award them \$50.00.

The landlords are awarded \$3,650.00 which represents unpaid rent and the filing fee. I order the landlords to retain the \$900.00 security deposit and \$900.00 pet damage deposit in partial satisfaction of the claim and I grant the landlords a monetary order under section 67 for the balance due of \$1,850.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The tenants' claim is dismissed. The landlords are granted an order of possession and a monetary order for \$1,850.00. The landlords may retain the security deposit.

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: March 31, 2011

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Residential Tenancy Branch