



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – CNR, ERP, RP, FF

For the landlord – OPR, OPB, MNR, FF

### Introduction

This decision was scheduled to deal with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were due to be heard together. The matter was set for a hearing at 1.30 p.m. on this date to hear the applications. The hearing went ahead as scheduled and the agent for the landlord dialed into the conference call. The phone line remained open for the duration of the hearing however the tenants did not dial into the call during this time. Based on this I find that the tenants have failed to present the merits of their application and their application is dismissed without leave to reapply.

The landlord seeks a Monetary Order to recover unpaid rent and to recover their filing fee. At the outset of the hearing the landlord withdrew her application for an Order of Possession as the tenants have moved from the rental unit.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, and was served to the tenants in person on June 16, 2011.

The landlords agent gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?

### Background and Evidence

The landlords' agent testifies that this tenancy started on March 15, 2011 when the tenants moved into the rental unit. The tenants were given two weeks rent free and the tenancy agreement starts from April 01, 2011. This is a fixed term tenancy which is due to expire on March 31, 2012. Rent for this unit was \$1,095.00 and is due in advance on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$547.50 and a pet deposit of \$250.00 on or about March 03, 2011.

The landlord testifies that the tenants did not pay rent for June, 2011 and a 10 Day Notice to End Tenancy was served upon the tenants on June 07, 2011. This notice had an effective date of June 19, 2011 and stated that the tenants owed rent of \$1,095.00 which was due on June 01, 2011. The landlord states the tenants did apply to cancel the Notice until June 14, 2011 and moved from the rental unit on July 02, 2011 before the hearing date.

The landlord testifies that the tenants left the unit in a filthy condition which meant she has not yet been able to re-rent the unit for July, 2011 until the unit has been cleaned. The landlord seeks to recover unpaid rent for June, 2011 to the sum of \$1,095.00. The landlord also seeks to add to her claim to recover unpaid for July, 2011 due to the condition the tenants left the unit in.

### Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and affirmed testimony before me. With regard to the landlords undisputed claim for unpaid rent for June, 2011; I accept the tenants were served with a 10 Day Notice to End Tenancy in person on June 07, 2011. This Notice states the tenants have five days to either pay the outstanding

rent or dispute the Notice. The tenants did not pay the rent and although they did dispute the Notice they did not do so within the five allowable days.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

In light of this I find the tenants have failed to pay rent for June, 2011 and the landlord is entitled to a Monetary Order to recover the sum of **\$1,095.00** from the tenants pursuant to s. 67 of the Act.

With regard to the landlords claim for unpaid rent for July, 2011; the landlord did not make a claim on her application for this sum but requested to recover unpaid rent for July during the hearing due to the condition the tenants left the rental unit in. I have considered this request and find the landlord has provided no evidence to show what condition the tenants left the unit in or what steps they took to mitigate the loss of rent by showing how they advertised the unit again. However, as the tenants did not move out of the unit until July 02 ,2011 and therefore it is my decision the landlords are entitled to claim a prorated rent for July 01 and July 02, 2011 to the sum of **\$70.64** pursuant to s. 67 of the Act.

As the landlord has been successful with her amended claim I find she is also entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the Act.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,215.64** comprised of unpaid rent and the filing fee. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenant's application is dismissed without leave to reapply.

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: July 11, 2011.

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Residential Tenancy Branch