



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

In their application, the landlord had named the respondent S.S. and another party, C.S., as respondents. The tenancy agreement clearly lists C.S. as an occupant rather than a tenant and identifies P.S. as a tenant. P.S. appeared at the hearing and understood that the claims made were against him. As the parties agreed that P.S. should properly have been named instead of C.S., I have amended the style of cause in this proceeding to reflect an amendment to the landlord's application.

### Issues to be Decided

Should the notice to end tenancy be set aside?  
Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The relevant facts were not in dispute. The tenants are obligated to pay \$1,500.00 per month in rent and did not pay rent in November. On November 2, the landlord served the tenants with a 10 day notice to end tenancy for unpaid rent. P.S. testified that he did not pay rent because the landlord had not performed repairs.

### Analysis

Section 26(1) of the Act requires tenants to pay rent when it is due regardless of whether the landlord has complied with the Act. I find that the tenants did not have the right to withhold rent in the month of November and accordingly I dismiss their claim for an order setting aside the notice to end tenancy.

I find that the landlord is entitled to an order of possession and I enclose a formal order herewith. The tenants must be served with the order. If they fail to comply, the order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to recover \$1,500.00 in unpaid rent for the month of November as well as the \$50.00 filing fee paid to bring this application. I order the landlord to retain the \$700.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$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 \$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: November 24, 2011

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Residential Tenancy Branch