



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPR, CNR, MNR, MNSD, MNDC, ERP, RP, PSF, O

### **Introduction**

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”) and dealt with cross Applications for Dispute Resolution by the Landlord and Tenants. The Landlord’s Application requested an order of possession, a monetary order for unpaid rent, recovery of the filing fee, and an order to keep the security deposit. The Tenants’ Application requested to cancel the Notice to End Tenancy for unpaid rent, a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement, return of the security deposit, an order to the Landlord to make emergency repairs for health or safety reasons, to make repairs to the rental unit, and to provide services or facilities required by law.

The Landlord and Tenants attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

### **Preliminary Matter(s)**

#### **Emergency repairs, repairs/maintenance, and provide services or facilities**

The parties confirmed that they each required a copy of the other party’s Application and Notice of Hearing. The Tenants identified there is a toilet issue and a bed bug issue as emergency repairs or repairs on their Application. The Tenants stated that the Landlord had resolved the toilet issue prior to the hearing by having a plumber replace the toilet, however, the bed bug issue has not been resolved to their full satisfaction at this time. I do not find that the bed bug issue meets the definition of emergency repairs as set out in section 33 of the Act, rather this is a maintenance and repair issue.

The parties agree that the bed bug issue has not been resolved at this time. The Tenants stated that the Landlord and a pest control contractor came at an inconvenient time one morning to the rental unit to continue with the bed bug treatment process. The Tenants stated that they did not provide the Landlord with an alternate time to return to the rental unit. The Landlord stated that the Tenants declined them access so that they have only performed one treatment to date on the bed bugs. I therefore find that it is incumbent on both parties to cooperate in getting the bed bug issue treated. The Landlord is required to provide at least 24 hours written notice in accordance with

section 29 of the Act before entering the rental unit to treat the bed bugs and the time provided on the notice must be between 8 a.m. and 9 p.m. as allowed by the Act. If the Landlord provides 24 hours written notice in accordance with the Act, then the Tenants must allow the Landlord access so that they can treat the bed bug infestation.

#### Tenants' request for monetary compensation for damage or loss

The Tenants stated that they did not receive a copy of the Landlord's evidence in response to his monetary claim. The Landlord confirmed that he did not send the Tenants copies of his evidence in response to the Tenants' claims. The Tenants stated that they provided photographs with detailed information written on the back of each photo explaining their damages, losses and monetary claim for \$2500.00 to our office and that a copy was provided to the Landlord. Upon examining the Tenants' photographic evidence I found that there was no written information on the back of any of the photographs they had submitted to our office. The Tenants stated this is pertinent information that supports their claim. As a result, the Tenants requested that their claim be dismissed with leave to reapply so that they can submit their evidence more completely. The Landlord did not dispute this request by the Tenants.

I find it is appropriate to dismiss the damages, losses and monetary compensation portion of the Tenants' claim with liberty to reapply.

#### **Issue(s) to be Decided**

Is the Tenant entitled to have the Notice to End Tenancy for unpaid rent cancelled or is the Landlord entitled to an order of possession, a monetary order for unpaid rent, recovery of the filing fee, and an order to keep the security deposit?

#### **Background and Evidence**

The parties agree that they have a tenancy which started on October 28, 2011, with a monthly rent of \$750.00 due on the second of each month. The Landlord states that the tenancy agreement is in writing, however a copy was not provided to the Tenants or our office in advance of the hearing. The parties agree that the Tenants paid a security deposit of \$375.00 at the time the tenancy commenced. The parties agree that the Landlord served the Tenants in person with a Ten Day Notice to End Tenancy for unpaid rent on December 03, 2011. The Tenants provided a copy of both pages of the Notice with their Application in advance of the hearing. The Tenants confirmed that they are still in the rental unit and have not moved out and that they have not paid the rent for December 2011.

The Landlord states that the Notice was issued after the Tenants failed to pay their rent for December. The Landlord stated that he replaced the toilet and it is fixed as requested by the Tenants. The Landlord stated that his pest control contractor had done one treatment for bed bugs at the rental unit as requested by the Tenants, but that

when they attended the rental unit to do follow up treatment the Tenants refused to let them in.

The Tenants stated that they thought they could withhold rent while they were waiting for the toilet and bed bug issues to be resolved, but that they realize they should not have withheld the rent after they filed their Application. The Tenants stated that they are not currently able to pay the rent in full as one of them has to be in the hospital receiving medical treatment. The Tenants confirmed that they have paid no rent for December and that the amount owing is \$750.00.

The Landlord is requesting an order of possession, the unpaid rent for December 2011 in the amount of \$750.00, reimbursement of the \$50.00 filing fee, and an order to retain the security deposit in partial compensation for the amounts owed.

### **Analysis**

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

I find that the Tenants were properly served with the Ten Day Notice to End Tenancy for Cause on December 03, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline. As the Notice was personally delivered to the Tenants it was deemed to have been served on December 03, 2011(the same day).

The Notice is a formal legal document and the Tenants did not pay their rent within five days of receiving the Notice and they did not vacate the rental unit. The Tenants' did not have an order under the Act allowing them to withhold the rent. The Tenants' request to cancel the Notice is dismissed.

The Landlord correctly stated on the Ten Day Notice that the Tenants had until December 13, 2011 to vacate the premises, as this is ten days from the date the Notice was deemed served, pursuant to the provisions set out in section 46 of the Act and the Residential Tenancy Policy Guideline. As the Landlord properly served the Notice on the Tenants and has requested an order of possession, I find that the Landlord is entitled to an order of possession for the rental unit effective two days from the date of service of the order on the Tenants.

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the second of the month. The Tenants agree that they did not pay the Landlord the rent for December 2011 and that \$750.00 is owed. I find that the Landlord is entitled to a monetary order for the \$750.00 rent owing for December 2011.

As the Landlord has succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the balance owing to the Landlord to \$800.00.

I order that the Landlord retain the full amount of the security deposit \$375.00 in partial satisfaction of the amount they are owed, which leaves a balance owing to the Landlord of \$425.00. I grant the Landlord an order under section 67 for \$425.00.

### **Conclusion**

The Tenants' request for a monetary compensation for damage or loss is dismissed with liberty to reapply.

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenants. This order must be served on the Tenants and may be filed in Supreme Court.

I find that the Landlord is entitled \$800.00 for unpaid rent and the filing fee. I order the Landlord to keep the security deposit of \$375.00 and I grant the Landlord a monetary order for balance of the unpaid rent and the filing fee in the amount of **\$425.00**. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims).

The orders accompany the Landlord's copy of this decision.

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: December 20, 2011.

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Residential Tenancy Branch