



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## 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's agent only.

The landlord provided documentary evidence the tenants were served with the notice of hearing documents and the initial Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on February 29, 2012 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5<sup>th</sup> day after it was mailed.

Based on the evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing the landlord's agent testified the tenants vacate the rental unit on March 4, 2012 and as such there is no longer a need for an order of possession. I therefore amend the landlord's Application to exclude the matter of possession.

In addition the landlord had submitted, prior to the hearing, invoices and estimates for cleaning; painting and flooring replacements and a written submission that the landlord sought additional costs totalling over \$5,000.00.

The landlord's agent testified that they had served the tenants with this additional claim by sending these invoices and estimates to the dispute address, after the tenants had vacated the rental unit. Section 89 of the *Act* requires a copy of any amendments to an Application for Dispute Resolution, when sent by registered mail, to be sent to an address where the tenants reside or a forwarding address that is provided by the tenants.

As a result, I find the landlord has not served the tenants in accordance with the *Act* and I decline the landlord's request to amend this Application to include the items of cleaning; painting and flooring. I will allow the landlord to amend the Application to include consideration for rent for March 2012, as the tenants were appropriately served with notice that rent would be under dispute at this hearing.

### 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 tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, , 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on July 2, 2010 for an 11.5 month fixed term tenancy that began on July 15, 2010 and converted to a month to month tenancy on July 1, 2011 with monthly rent, at the end of the tenancy of \$1,480.00 due on the 1<sup>st</sup> of each month and a security deposit of \$725.00 was paid.

The landlord submitted a copy of an email sent from the tenants to the landlord on January 5, 2011 giving their notice that they intended to vacate the unit by February 1, 2012. A follow up email from the tenant on January 11, 2012 stated that the tenants were withdrawing their notice to end tenancy.

While the landlord agreed to extend the effective vacancy date on the notice to February 29, 2012 the landlord's agent testified the tenants failed to pay rent on February 1, 2012 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The agent further testified the tenant's did not pay rent for February and vacated the unit on March 4, 2012 and did not pay any rent for March 2012.

### Analysis

Section 45 of the *Act* allows a tenant to end their tenancy by giving the landlord a notice of this intention including the date that the tenant intends to vacate the rental unit. Residential Tenancy Policy Guideline #11 states that neither a landlord nor a tenant can unilaterally withdraw a notice to end tenancy.

While I accept the landlord, in this case, agreed to amend the end date of the tenancy I find the tenants' notice to end the tenancy was the act that led to its end. It is also clear, by way of the agent's testimony, that the tenants had no intention of paying rent for the month of February and should have vacated the unit no later than February 16, 2012 in accordance with the 10 Day Notice issued by the landlord.

Instead, the tenants blatantly disregarded the 10 Day Notice and the landlord's generosity of allowing them to stay until the end of February (although this permission was granted prior to the tenants' failure to pay February rent). As such and combined with the fact that the tenants failed to vacate the unit prior to March 1, 2012 when additional rent would have been due, I find the tenants are responsible for the payment of rent for the months of February and March 2012.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,010.00** comprised of \$2,960.00 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 \$725.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,285.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 14, 2012.

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Residential Tenancy Branch