



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR FF  
                                CNR ERP

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenants.

The Landlord filed on January 7, 2013 seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenants.

The Tenants filed seeking an Order to cancel the notice to end tenancy issued for unpaid rent and to have the Landlord Ordered to make emergency repairs to the unit, site, or property.

The Landlord affirmed that each Tenant was served copies of their application for dispute resolution and notice of hearing documents on January 18, 2013 by registered mail. One of the Canada Post receipt numbers was provided in the Landlord's testimony. Based on the submissions of the Landlord I find that each Tenant was sufficiently served notice of this proceeding and I continued in the Tenants' absence.

### Issue(s) to be Decided

1. Should the Notice to End Tenancy issued January 2, 2013 be cancelled or upheld?
2. If upheld, should the Landlord be awarded an Order of Possession?
3. Should the Landlord be issued a Monetary Order?
4. Should the Landlord be ordered to complete emergency repairs?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the 10 Day Notice to end tenancy issued January 2, 2013; a proof of service document; and the tenancy agreement.

The parties entered into a month to month tenancy that began on May 15, 2011. Rent is payable on the first of each month and on May 15, 2011 the Tenants paid \$350.00 as the security deposit.

The Landlord submitted that when the Tenants short paid their January 1, 2013 rent a 10 Day Notice was posted to their door on January 2, 2013, at 6:00 p.m. in the presence of a witness. The Tenants have an accumulated unpaid balance owing of \$250.00.

The Landlord advised that the Tenant appeared at their office just prior to the hearing and advised them that he would not be calling into the hearing and that he will be moved out by 5:00 p.m. tomorrow. The Landlord wishes to proceed with his application and is seeking an Order of Possession for as soon as possible

There was no testimony provided in support of the Tenants' application as no one appeared at the teleconference hearing on behalf of the Tenants.

### Analysis

#### **Landlord's Claim**

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants received the Notice to end Tenancy on January 3, 2013, and filed an application to dispute the notice within the required timeframe. That being said, the Tenants have not provided sufficient evidence to prove that their failure to pay the full amount of rent was in accordance of the Act. Rather, I find the Tenants' failure to pay the full rent on January 1, 2013 to be a breach of section 26 of the Act that stipulates rent must be paid in accordance with the Tenancy agreement.

The Tenants received the Notice on January 3, 2013; therefore, the effective date of the Notice is **January 13, 2013**, in accordance with section 90 of the Act. The Tenants did not pay the rent, therefore, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$250.00 which was due January 1, 2013. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$250.00**.

The Landlord has been successful with their application; therefore I award recovery of their **\$50.00** filing fee.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

### **Tenants' Claim**

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenants called into the hearing during this time.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any submissions from the applicant Tenants I order the application dismissed without liberty to reapply.

### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenants.

The Landlord has been awarded a Monetary Order in the amount of **\$300.00** (\$250.00 + \$50.00). This Order is legally binding and must be served upon the Tenants.

The Tenants' claim is HEREBY 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: January 31, 2013

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Residential Tenancy Branch

