



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RE/MAX COMMERCIAL SOLUTIONS  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNR, OPR, MNR

### Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For an order of possess for non-payment of rent;
2. For a monetary order for unpaid rent;

The tenants' application is seeks an order as follows:

1. To cancel a notice to end tenancy issued on August 2, 2013;

### Tenants' application

This matter was set for hearing by telephone conference call at 2:00 P.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenants did not attend the hearing by 2:10 P.M, and the landlord appeared and was ready to proceed, I dismiss the tenant's claim without leave to reapply.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

As I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **two (2) days** after service of this Order upon the tenants.

### Landlord's application

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served personally on September 4, 2013, which was witnessed. The tenants did not appear. I find that the tenants have been duly served in accordance with the Act.

### Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

### Background and Evidence

The landlord testified that on July 27, 2013, the tenants were given early possession of the rental unit. The landlord stated the tenants paid rent for August 2013, in the amount of \$600.00 and a security deposit of \$300.00.

The landlord testified that on the morning of July 30, 2013, they received complaints from other occupants about excessive noise coming from the tenants unit. The landlord stated after speaking with the tenants it was decided that they were not a right fit for this building and they agreed to move out in a couple days. The landlord stated that the tenants accepted the return of the rent and security deposit which was paid for August rent.

The landlord testified that the tenants failed to vacate the rental unit as agreed. The landlord stated as the rent the tenants had originally paid for August was returned; they issued the tenants a notice to end tenancy for non-payment of rent.

The landlord testified the tenants have not pay rent for August and they have failed to pay rent for September 2013. The landlord seeks a monetary order for unpaid rent in the amount of \$1,200.00.

Filed in evidence is an affidavit of (DS), resident caretaker, which in part reads.

9. "(name removed) and I went and knocked on the door of suite 206, where the (name removed) informed the Prospective Tenants about the complaints and said he felt they would not be a good fit for the (name removed) Apartments."

10. "After the Prospective Tenants and (landlord) discussed the matter, the Prospective Tenants accepted the envelope containing the \$900.00 and agreed to move out in a couple of day."

[Reproduced as written]

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlords have the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the Residential Tenancy Act states:

*26 (1) 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.*

The evidence of the landlord was that they had received complaints from other occupants about excessive noise coming from the tenants' rental unit. The evidence of the landlord was that after a discussion with the tenants that they agreed to end the tenancy by mutual agreement. The evidence was that the tenants would vacate the premises within a couple of days. The evidence of the landlord was that the tenants accepted the return of the rent that they had paid for August 2013 and the return of the security deposit.

The evidence of the landlord was that the tenants failed to vacate the premises as agreed and they were served with a notice to end tenancy for non-payment of rent for August. The evidence of the landlord was that the tenants have further failed to pay rent for September 2013.

The affidavit evidence of (DS) confirmed the landlords position, that the parties had agreed to end the tenancy and that she witnessed the return of the envelope containing \$900.00.

As a result, I find the tenants have breached section 26 of the Act when they failed to pay rent when due and this has caused losses to the landlords.

I find that the landlords have established a total monetary claim of **\$1,250.00** comprised of unpaid rent for August, September 2013 and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession

The landlords are granted a monetary order for non-payment for rent.

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: September 18, 2013

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Residential Tenancy Branch

