



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code 0PC, MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for an order of possession, for a monetary order for unpaid rent.

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 by serving the tenant (ND) personally on September 2, 2013. I find that the tenant (ND) has been duly served in accordance with the Act.

The landlord testified that he was unable to serve the tenant (VD) and left her copies of the Application for Dispute Resolution and Notice of Hearing with the tenant (ND).

Under Section 89 of the Act, the Application for Dispute Resolution must be served on the other party either by personal service or by registered mail. As a result, I find the landlord has not met the service provision under the Act. Therefore, the landlords' application against the tenant (VD) is dismissed with leave to reapply.

This hearing proceeded against the tenant (ND).

### Preliminary Issue

The landlords filed an amended Application for Dispute Resolution, however, that amendment was not served on the tenants, as the tenants did not provide the landlords with their forwarding address at the end of the tenancy as required by the Act.

Under the Residential Tenancy Branch Rules of Procedures, the amended application must be served on the tenants. As a result, the landlord's amended application is not able to proceed. The landlord is at liberty to reapply for the loss of utilities and damages to the rental unit.

At the outset of the hearing the landlord stated that the tenants have vacated the rental unit and an order of possession is no longer required.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issues to be Decided

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

### Background and Evidence

The tenancy began on August 1, 2012. Rent in the amount of \$2,400.00 was payable on the first of each month. A security deposit of \$1,000.00 was paid by the tenants. The tenancy ended on August 31, 2013.

The landlord testified that the tenants were having difficulties paying rent and were in rent arrears of \$1,815.00 as of July 2013. The landlord stated the tenants did not pay any rent for August 2013. The landlords seek to recover unpaid rent in the amount of \$4,215.00.

The landlord testified that he does not want the security to offset the rent owed as the tenants have not provided their forwarding address and his claim for unpaid utilities and damages exceed that amount.

### 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 landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

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.

Under section 26 of the Act, 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 the tenants were in rent arrears of \$1,815.00 as of July 2013 and did not pay any rent for August 2013. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlords. Therefore, I find the landlords are entitled to compensation for unpaid rent in the amount of **\$4,215.00**.

I find that the landlords have established a total monetary claim of **\$4,265.00** comprised of the above described amount and the \$50.00 fee paid for this application. I grant the landlords a formal order under section 67 of the Act.

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

Conclusion

The landlords are granted a monetary order in the above described amount against the tenant (ND).

The landlords are at liberty to reapply for unpaid utilities and damages as they were unable to serve the tenants with their amended application as no forwarding address was provided by the tenants.

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: October 09, 2013

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Residential Tenancy Branch

