



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MDSD, CNR & FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 Notice to End Tenancy was sufficiently served on the Tenants by posting on December 4, 2013. Further, I find that the landlord served a second 10 day Notice to End Tenancy on the Tenants by posting on December 18, 2013.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenants was sufficiently served on the landlord by mailing, by registered mail. The landlords acknowledged receipt of the same.

The landlords testified they attempted to serve the landlord's Application for Dispute Resolution on the tenants by mailing, by registered mail to where the tenants reside. However, the landlords were not able to provide the registered mail receipt. The tenants testified they never received a landlord's Application for Dispute Resolution. The landlords acknowledged the documents were returned to them. I determined the landlords failed to prove the landlord's Application for Dispute Resolution was served on the tenants. . With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling a 10 day Notice to End Tenancy dated December 18, 2013?
- b. Whether the tenant is entitled to a repair order?
- c. Whether the tenant is entitled to recover the cost of the filing fee?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The landlord produced a tenancy agreement in writing between the tenants and a real estate company acting on behalf of the landlord that provided that the tenancy was to commence on March 1, 2013 and end on February 28, 2014. The rent in the written agreement was set at \$3000 per month. The tenants paid a security deposit of \$1500. The real estate company is no longer represents the landlord.

The tenants testified that the property had not been lived in for several years and was a mess. They had an agreement with the real estate company that they would be responsible to pay \$3000 for March 2013 but that the real estate agent would contact the landlord about a reduction in rent. They testified they never received a copy of the written tenancy agreement. Shortly after moving in the tenants testified they experienced a significant flood in the basement that limited their enjoyment of the rental property.

The tenants have made a \$12,000 and a \$5000 payment towards the rent. The landlord claims a further \$13000 is owed to the end of January 2014.

A dispute has arisen between the parties as to the amount of the rent and to what extent if any the tenants are entitled to a reduction of rent because on the continual problem with leaking in the basement. On December 31, 2013 the tenants gave the real estate company a one month notice in writing they were ending the tenancy agreement. The tenants vacated the rental unit at the end of January. The landlords acknowledged the tenants have vacated the rental unit.

Tenant's Claim:

The Application for Dispute Resolution filed by the tenants seeks an order to cancel the 10 day Notice to End Tenancy and a repair order. The tenants have vacated the rental unit and a determination of these issues is moot. **As a result I order that the application of the tenants be dismissed.**

Landlord's Claim:

The landlords failed to prove that they have properly served the Landlords Application for Dispute Resolution on the Tenants. The landlords failed to produce the registered mail receipt. The tenants deny receiving it. The landlords acknowledged the documents were returned to them. **As a result I order that the application of the landlord be dismissed with liberty to re-apply.** I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

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: February 04, 2014

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Residential Tenancy Branch

