



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MND, OLC, RB, OPR, OPB, MNR, FF

### Introduction

In the first application the tenants seek to cancel a ten day Notice to End Tenancy for unpaid rent, for an order the landlords comply with the law and the tenancy agreement and conduct repairs and for damages for the landlords' failure to do so.

In the second application the landlords seek an order of possession and a monetary award for unpaid rent and loss of rental income.

The tenants chose to vacated the premises in mid-March and so the question of validity of the ten day Notice, the request for a repair order and the landlords' request for an order of possession are no longer in issue.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenants are entitled to damages or the landlords' entitled to rent?

### Background and Evidence

The rental unit is described as a one bedroom "cabin" in a group of fourteen other cabins. The tenancy started December 1, 2013. The monthly rent was \$650.00. The landlords hold a \$325.00 security deposit. The tenants moved out on March 12<sup>th</sup>. The landlords re-entered on March 14<sup>th</sup> or 15<sup>th</sup>.

The tenants alleged that they moved in early, on November 30<sup>th</sup> with the landlords' permission but the carpet was wet and their movers had to move old appliances out of the cabin to move the tenants in. They say the premises were not reasonably ready for habitation and that the landlords failed to attend to promised repairs and renovation over the following weeks including taking away the discarded appliances. They provided a series of photos showing what they claim to be damage and problems in need of repair.

The tenants testify that Ms. D.A. paid the landlord Mr. S.V. the \$650.00 February rent in cash on January 29<sup>th</sup> while he was working in the area. They say he promised them a receipt but did not have his receipt book handy and they never did receive one.

The landlords say the tenants moved in a day early and to a cabin the tenants knew and accepted in the condition it was in. They say the February rent was not paid. Mr. S.V. denies receiving any cash on January 29<sup>th</sup> or any other time.

It became evident that there had been at least one major physical altercation between the parties. The tenants filed copies of both the landlords' Undertaking Given to a Peace Officer for an "offence date" of February 12, 2014. The landlords deny they face any charges though it appears Mr. S.V. is required to make a court appearance in the near future regarding the matter. There may have been another incident earlier, in December 2013, that required police attendance.

The landlords claim the altercation(s) were the tenants' fault and adduced statements of other tenants on the property to the effect that the tenants are troublemakers, or at least, careless drivers.

Mr. A.V. claims that the tenant Ms. D.A. told him she was a former residential property manager and would attend to the things that needed attention around the cabin.

### Analysis

I consider the conduct of the parties towards each other to be not particularly germane to the question of whether or not the landlords were to do repairs and improvements and whether or not the February rent was paid. Such conduct might arguable go to credibility but in the present case, without further corroboration, each side's allegations about the conduct of the other boil down to a "he said/she said" scenario, not of any particular help in the matter of credibility.

I dismiss the tenants' claim for damages for the landlords' alleged failure to provide reasonable accommodation or conduct repairs. The premises were humble accommodation. The building is a cabin. The rent is low in my view. Having regard to those factors, nothing in the tenants' evidence persuades me the accommodation was not reasonable. In regard to repairs there may have been some discussion or understanding that the landlords would attend to some repair. In order for such a term to be enforceable it must be "expressed in a manner that clearly communicates the rights and obligations under it" according to s.6 (3) (c) of the *Residential Tenancy Act*

(the “Act”). I find that the terms alleged by the tenants have not been clearly expressed in an agreement with the landlords and are not enforceable.

Regarding the payment of rent for February, the tenants have put themselves in a difficult spot by paying cash and not obtaining a receipt. Section 26 (2) of the *Act*, requiring a landlord to give a receipt for cash rent payment, was a provision inserted in the legislation specifically to avoid situations such as this. Because of that section tenants who pay rent in cash and don’t collect a receipt must have their evidence of cash payment firmly corroborated. The tenants here do not have that objective corroboration. The burden is on a tenant to prove payment of rent and here the tenants have not satisfied that burden.

I find that the February rent was not paid and that the landlords are owed \$650.00.

By consent the landlords’ application was amended to include a claim for March rent or loss of rental income from March. I find the ten day Notice was an effective Notice and resulted in the ending of this tenancy on or about February 17<sup>th</sup>, 2014. The tenants overheld their tenancy into March and as a result the landlords lost the rental income they might otherwise have from new tenants. I award them an additional \$650.00 on this account.

### Conclusion

The tenants’ application is dismissed. The landlords are entitled to a monetary award of \$1300.00 plus the \$50.00 filing fee. I authorize the landlords to retain the \$325.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenants jointly and severally for the remainder of \$1025.00.

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: April 01, 2014

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Residential Tenancy Branch

