



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, FF  
                              CNR, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities, for a monetary order for damage to the unit, site or property, and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end tenancy for unpaid rent or utilities and to recover the filing fee from the landlord.

The landlord attended the hearing, gave affirmed testimony and called one witness who gave affirmed testimony. However, despite making an application for dispute resolution, and despite each tenant being individually served with the Landlord's Application for Dispute Resolution by registered mail on November 19, 2014, no one for the tenants attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the conference call hearing were the landlord and the landlord's witness. The landlord testified that the tenants were served on that date and in that manner and was given the opportunity to provide proof of service at the conclusion of the hearing. The landlord provided a copy of the Registered Domestic Customer Receipt for each of the 2 tenants showing the tracking numbers as well as the Canada Post receipt bearing the date of November 19, 2014, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

Since the tenants have not attended the hearing, the tenants' application is hereby dismissed in its entirety without leave to reapply.

The landlord also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the tenants. The landlord and the landlord's witness each gave independent affirmed testimony, all of which is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?

Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 2011 and the tenants have moved out of the rental unit, however some personal items remain. Rent in the amount of \$850.00 per month is payable on the 1<sup>st</sup> day of each month. No written tenancy agreement was signed by the parties, and the landlord did not collect a security deposit or a pet damage deposit from the tenants.

The landlord further testified that the tenants failed to pay rent in full for the month of October, 2014, having paid \$800.00 and advised that since the tenants removed garbage from the rental unit, they were deducting that amount from the rent. The landlord did not agree, and the tenants are in arrears \$50.00 for October.

The tenants further failed to pay rent for the month of November, 2014 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The notice was served by posting it to the door of the rental unit on November 5, 2014. A copy of the notice has been provided and it is dated November 5, 2014 and contains an expected date of vacancy of November 14, 2014 for unpaid rent in the amount of \$850.00 that was due on November 1, 2014. The tenants have also failed to pay any rent for December, 2014 and are now in arrears of rent the sum of \$1,750.00. The landlord also claims \$850.00 for January's rent, but also testified that rental units are not difficult to re-rent in the area.

The landlord was served with the tenants' application disputing the notice.

The landlord also testified that no move-in condition inspection report was completed at the beginning of the tenancy, however since the tenancy began, the screen door has been broken and was found lying outside the rental unit. The landlord's witness moved it to the laundry room, which is a common area in the rental complex. The landlord has provided a copy of an estimate showing that the cost is expected to be \$140.00 including taxes to replace the door, however the landlord is not certain whether or not any other damages exist.

The landlord claims an Order of Possession, a monetary order for unpaid rent in the amount of \$1,750.00, loss of revenue for \$850.00, damages in the amount of \$140.00, and recovery of the \$50.00 filing fee.

The landlord's witness testified that he is employed by the landlord and was at the rental unit yesterday. The tenants moved out of the rental unit last week leaving garbage outside the rental unit.

### Analysis

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*. I am satisfied that the tenants were served with the notice on November 5, 2014 by posting it to the door of the rental unit. I have no evidence before me that the tenants have returned the key to the rental unit. The tenants disputed the notice but did not attend the hearing, and having dismissed the tenants' application, I am satisfied that the landlord is entitled under the *Residential Tenancy Act* to an Order of Possession.

I am also satisfied that the landlord has established a monetary claim as against the tenants for unpaid rent in the amount of \$1,750.00 for October, November and December, 2014. With respect to the landlord's request for a monetary order for January's rent, the *Act* requires a person who makes a claim against another to do whatever is reasonable to mitigate the loss. In this case, the landlord testified that it is not difficult to re-rent in the area, and I find that the landlord has not yet incurred any loss of revenue and has failed to establish that he will, and that portion of the application is dismissed.

With respect to the landlord's claim for damages, the *Act* requires a landlord to conduct a move-in and a move-out condition inspection report, and must give a tenant at least 2 opportunities to attend the inspection. In this case, the landlord did not complete the move-in condition inspection report and has not yet given any opportunity to complete the move-out condition inspection with the tenants, or determined the extent of the damages. I find that the landlord has made the application prior to the tenants moving out of the rental unit and the application is premature, and I dismiss it with leave to reapply.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,800.00.

These orders are final and binding and may be enforced.

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: December 15, 2014

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Residential Tenancy Branch

