



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, CNR

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent and an application by the tenants for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

At the hearing, the tenants stated that they were unaware of the landlord's claim. The landlord testified that she served the tenants with a copy of her claim by sending it via registered letter. When notices came from Canada Post advising the tenants of the registered mail, she placed those notices under the tenants' door. The landlord further testified that she is aware that Canada Post knocked on the door while the tenants were home in an attempt to deliver the registered letter. The tenants repeatedly stated that because they hadn't picked up the registered letter, they didn't have notice of the landlord's claim. I find that the tenants were actively avoiding service by refusing to pick up the registered letter despite having been given several notices. The tenants cannot escape the landlord's claim by avoiding service. I find that the landlord complied with her obligation under the Act and have considered her claim.

### Issues to be Decided

Should the notice to end tenancy be set aside?

### Background and Evidence

The parties agreed that the tenants are obligated to pay \$900.00 in advance on the first day of each month. They further agreed that in 2014, the tenants were late with rent 9 times. The tenants claim that in November, they paid the full amount of rent due, although it was late. They did not submit any documentary evidence, but claimed that they had a receipt from the landlord showing that they paid \$700.00 on November 24. They claim that they paid the balance on another occasion, but testified that although

the landlord gives them a receipt for each cash payment, on that one occasion she failed to do so.

The landlord testified that the tenants failed to pay \$100.00 of their rent in November. She acknowledged that the tenants had paid \$700.00 on November 24 and testified that they had also paid \$100.00 on November 2, leaving them \$100.00 in arrears.

The parties agreed that the tenants did not pay their rent on December 1, 2014. The landlord served them with a 10 day notice to end tenancy on the same date.

The tenants testified that it was the landlord's fault that they could not pay their rent as she withheld their mail from them and caused them to miss out on benefits which they otherwise would have received because they were unable to meet filing deadlines due to not having received forms in the mail in a timely manner.

The parties agreed that the tenants paid their December rent on December 18 and that the landlord issued a receipt for use and occupancy only. The parties further agreed that the tenants paid no rent whatsoever in the month of January 2015.

### Analysis

I do not accept the testimony of the tenants. They offered a number of creative excuses for why they did not pay rent but none of them held the ring of truth. It does not make sense that the landlord would refuse to give them the forms they needed to fill out in order to receive benefits which would allow them to pay their rent. The landlord has been extraordinarily patient and apparently has not tried to evict the tenants although they were unable to pay their rent on time through most of 2014 and it does not in any way benefit the landlord to prevent the tenants from receiving income. I did not believe any of the testimony of the tenants except where it agreed with that of the landlord.

I find that the tenants failed to pay \$100.00 of their rent in November and I award the landlord \$100.00. I grant the landlord a monetary order under section 67 for \$100.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

In order to end the tenancy for unpaid rent, the landlord must wait until the rent is late before serving a notice to end tenancy. I find that the landlord served the notice for December's rent on the day it was due and therefore the notice is invalid. I order that the notice be set aside and of no force or effect. The landlord is free to serve the tenants with a notice to end tenancy for unpaid rent for November as well as for unpaid rent for January.

Conclusion

The notice is set aside and the landlord is granted a monetary order for \$100.00.

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: January 07, 2015

---

Residential Tenancy Branch

