



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OP MNR MNSD FF

### Introduction

This hearing dealt with applications by the tenants and by the landlord. The tenants applied to cancel a 10 day Notice to End Tenancy for unpaid rent dated January 7, 2015. The landlords applied for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord's agent, who is their son called in and participated in the hearing. The named tenant also called in and testified at the hearing.

### Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

### Background and Evidence

This tenancy began on December 15, 2014. The rental unit is a suite in the basement of the landlord's house. The rent is \$725.00 due in advance on the first day of each month. The tenants paid a security deposit of \$362.50 at the start of the tenancy. The tenant did not pay rent for January when it was due. On January 7, 2015 the landlord personally served the male tenant with a Notice to End Tenancy for non-payment of rent in the presence of a witness. The tenants applied to dispute the Notice to End Tenancy on January 13, 2015. At the hearing the tenant testified that he made an agreement with the landlord's son to pay rent in installments. He said he offered a \$300.00 payment on account of January's rent but the landlord refused to accept it. He said that he sent text messages to the landlord's son concerning the rent payment and his refusal to accept the payment, but he did not submit copies of the alleged text messages. The tenant said that he was delayed in paying rent because he was waiting to receive worker's compensation benefits for a work related injury. The tenant said that there was

a flood in the rental unit and claimed that the landlord was refusing to make repairs and perform cleaning until the tenant paid the rent. The tenant also complained that the landlord was seeking to enter the rental unit without giving proper notice and giving too frequent notices to enter the rental unit.

The landlord's agent testified that he did tell the tenant that he could make his January rent payment in two installments. He testified that he received several text messages from the tenant within the space of an hour. In one message the tenant said that he had a \$300.00, soon after he received several more messages. In the last message the tenant made a remark that the landlord was refusing to accept his rent payment. The landlord's agent testified that he has not refused any payments, but the tenants have not presented any rent payments for the month of January and the full amount of the rent is due.

The tenant said that there was a flood in the rental unit and the landlord has failed or refused to deal with it. He claimed that there was now a mould problem that was affecting the health of all the residents in the rental property. The landlord's agent said that the so called flood was actually a minor plumbing leak in an adjoining suite that was repaired promptly after he received a text message reporting the problem. The landlord's agent said that the tenants have prevented the landlord from inspecting the rental unit and have prevented the landlord from having a professional carpet cleaner attend to clean the carpets. The landlord had to cancel a scheduled appointment when the tenants refused to allow access to the rental unit.

### Analysis

The *Residential Tenancy Act* provides by section 26 (1) that 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 *Residential Tenancy Act* permits a tenant to deduct an amount from a rent payment without first obtaining an order only when the tenant has paid for emergency repairs as defined by the Act and the landlord has not reimbursed the tenant after the tenant has provided written particulars to the landlord. The only other exception to the requirement to pay rent is contained in section 43(5) of the Act; it provides that: If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenants have not performed any repairs and there has been no rent increase since commencement of the tenancy. The tenants have not established that they have any

basis for withholding rent payments and I find that they have not provided evidence of any ground that would excuse them from their obligation to pay rent. I do not accept the tenant's submission that the landlord has refused to accept payment of rent. The tenants were served with the Notice to End Tenancy on January 7, 2015. They failed to pay the rent within five days of receiving the Notice to End Tenancy and the rent is still unpaid. The tenants' application to cancel the 10 day Notice to End Tenancy for unpaid rent is therefore dismissed without leave to reapply.

### Conclusion

*Order of Possession* - Based on the above background, evidence and analysis I find that the landlords are entitled to an order of possession effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

*Monetary Order and Security Deposit* - I find that the landlords have established a total monetary claim of \$725.00 for the outstanding rent for January. The landlords are entitled to recover the \$50.00 filing fee for this application for a total award of \$775.00. I order that the landlords retain the deposit and interest of \$362.50 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of \$412.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 29, 2015

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Residential Tenancy Branch

