



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

### Background and Evidence

The parties agreed that this month to month tenancy started on November 01, 2014. This was a verbal agreement between the parties for the tenants to pay rent of \$1,100.00 per month on the 1<sup>st</sup> of each month in advance.

The landlord testified that the tenants sent the landlord a text message on January 02, 2015 stating that they would be moving out of the rental unit on January 31, 2015. The

tenants paid \$500.00 towards rent for January and despite many text messages between the parties no further rent was paid. The tenants vacated the rental unit on January 05, 2015. The landlord seeks to recover the unpaid rent for January of \$600.00.

The landlord testified that as the tenants did not provide proper notice to end the tenancy, as it was given late and given by text message, then the landlord seeks to recover a loss of rent for February, 2015. The landlord testified that she had to clean the unit after the tenants vacated and put a message out on the landlord's Facebook page to advertise the unit for rent. The unit was not re-rented until April 01, 2015. The landlord seeks a loss of rent for February of \$1,100.00.

The tenants disputed the landlord's claims. The tenants testified that they did not pay the full amount of rent for January as they moved from the unit on January 05, 2015 due to harassment from the landlord and the fact that four other people had keys to the unit and could enter the unit without notice.

The tenants disputed the landlord's claim to recover a loss of rent for February, the tenants testified that they never had an address for the landlord to serve the landlord with written notice and as they always communicated via text message this was all they could do to give notice. The tenants had the landlord's bank details to pay rent into the landlord's account but no address was ever provided.

The landlord agreed the tenants did not have an address for her as she was between homes at the time. The landlord testified that the tenants were friends of hers and they could have got hold of the landlord any time.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

*26. 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.*

I am satisfied from the evidence before me that the tenants only paid rent of \$500.00 for January, 2015. This leaves a balance of \$600.00. I find the tenants' claim that they were harassed by the landlord has no merit in connection with unpaid rent. The rent should have been paid on January 01, 2015 and the tenants agreed they failed to do so. Consequently, I find in favor of the landlord's claim to recover the unpaid rent of \$600.00 and a Monetary Order has been issued to the landlord for this amount.

With regard to the landlord's claim to recover a loss of rent for February, 2015; the landlord is required to provide the tenants with an address for service so the tenants can serve a written notice to end their tenancy. The landlord did not provide an address for the tenants' use and consequently I find the tenants had no way other than by text message to provide notice to end their tenancy; however, the text message was not sent until January 02, 2015, whereas s. 45(1) of the *Act* states:

**45** (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice, and*

*(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

However, s. 7(2) of the *Act* states a landlord must attempt to mitigate or minimize their loss. This means the landlord must attempt to re-rent the unit as quickly as possible by placing adverts for the unit in a manner that would attract the largest audience. I do not consider placing a message on Facebook as mitigation and find the landlord failed to mitigate the loss by re-renting the unit in a timely manner. Had the landlord placed adverts on internet rental sites it is a possibility that the unit could have been rented sooner. Consequently, I find the landlord's claim for a loss of rent for February is dismissed.

As the landlords' claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*.

### Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$650.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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: August 12, 2015

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Residential Tenancy Branch

