



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession for cause; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

Both landlords attended the hearing and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on September 11, 2015, 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 call were the landlords. The landlords have provided a copy of a Canada Post cash register receipt as well as 2 Registered Domestic Customer Receipts addressed to each of the tenants stamped with that date by Canada Post, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

The landlord also testified that the Amended Application for Dispute Resolution was sent to tenants on October 23, 2015 by registered mail but was not picked up and returned to the landlords. The landlords' second amended application was on filed on October 25, 2015 and served to the tenants on October 26, 2015 by registered mail, and the tracking service shows that the tenants received it on October, 2015. The landlords have provided proof of that to the Residential Tenancy Branch by facsimile today, and that evidence was received by me after the hearing had concluded. The amendments are with respect to the monetary amount of loss claimed.

At the commencement of the hearing the landlords advised that the tenants have vacated the rental unit and the application for an Order of Possession is withdrawn.

Also, the landlords submit that an error is contained in the Landlord Application for Dispute Resolution by reversing the first and surnames of one of the tenants. The tenants both have the same last name, and I amended the application to reflect that. The style of cause on the frontal page of this Decision reflects that amendment.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlords be permitted to keep the security deposit in partial satisfaction of the claim?

**The first landlord** testified that one of the named tenants commenced a tenancy agreement with the landlords for a tenancy beginning on October 1, 2012. A new tenancy agreement was signed by the tenant and the landlords as well as another tenant for a fixed term tenancy to commence April 1, 2015 and expire August 31, 2015, thereafter reverting to a month-to-month tenancy. A copy of the agreement has been provided and it contains both names of the tenants named in this application. The tenancy ended on October 6, 2015.

Rent in the amount of \$1,300.00 per month was payable in advance on the 1<sup>st</sup> day of each month. On September 26, 2012 the landlords collected a security deposit in the amount of \$650.00 which is still held in trust by the landlords. The tenancy agreement provides for a pet damage deposit of \$650.00 as well, but the landlord testified that the tenants never paid it. Further, the tenants failed to pay any rent for the month of September, 2015.

On August 30, 2015 the landlord personally served the tenants with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. The notice was given to the tenant, (SL). The notice is dated August 30, 2015 and contains an effective date of vacancy of September 30, 2015 for repeated late rent and illegal activity that has or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

On October 1, 2012 the landlords and the original tenant, (SL) completed a move-in condition inspection report, however at the end of the tenancy the landlords were unable to complete a move-out condition inspection report with the tenants due to difficulties in getting the tenants to agree to a date and time. The landlords posted a Final Opportunity

to Schedule a Condition Inspection, and completed the move-out condition inspection report in the absence of the tenants. Copies of both reports have been provided, as well as photographs showing the condition of the rental unit after the tenants had vacated. The landlord testified that the photographs were taken on October 6, 2015 which is the date the tenants vacated. The tenants did not leave the rental unit reasonably clean and undamaged, and due to the amount of work that was required before it could be re-rented, the landlords could not advertise it for rent earlier than November 1, 2015. The rental unit was re-rented for November 1, 2015.

The landlords claim unpaid rent for the month of September, 2015 in the amount of \$1,300.00 as well as pro-rated rent for the tenants over-holding into the month of October, and loss of rental revenue for the balance of the month of October, 2015.

The landlord also testified that the tenants left numerous damages in the rental unit and attempted to have the damage claim heard in this hearing, however, the claim was made prior to the end of the tenancy and before the landlords made the required repairs.

**The second landlord** testified that the Residential Tenancy Branch advised the landlords to submit all evidence to the Branch and to the tenants 2 weeks before this hearing date, and not all work was completed prior to that.

### Analysis

I have reviewed the evidentiary material provided by the landlords and I find that it's clear the landlords have prepared a hearing package which includes evidence of damages left by the tenants. However, the *Act* states that a tenant must leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy, and the landlords' application was filed prior to the end of the tenancy and prior to making any repairs. Therefore, I find it premature to have made such an application, and I make no orders or findings with respect to monetary compensation for cleaning or repairs. The landlords are at liberty to make such an application, and I find that the landlords' application for monetary compensation before me is only with respect to loss of rental revenue and for unpaid rent.

The landlords' claim for loss of rental revenue for the month of October, 2015 is substantiated in the move-in and move-out condition inspection reports, as well as the photographs which the landlord testified were taken the day the tenants had vacated. I find the claim is absolutely justified. The tenants did not entirely vacate by September 30, 2015, and remained in possession of the rental unit until October 6, 2015, and appear to have left a lot of debris or belongings remaining and cleaning to be done. Based on that evidentiary material, I find that the cleaning and repairs could not have been done in time

to advertise for a new tenancy to commence any sooner than November 1, 2015. Therefore, I find that the landlords have established a claim in the amount of \$1,300.00 for the month of October, 2015.

I also accept that the tenants failed to pay any rent for the month of September, 2015, and in the absence of any evidence to the contrary, and considering the reasons for the notice to end tenancy to be issued, I am satisfied that the landlords are owed \$1,300.00.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee.

I order the landlords to keep the \$650.00 security deposit in partial satisfaction of the claim and I grant the landlords a monetary order for the difference in the amount of \$2,000.00.

### Conclusion

For the reasons set out above, the landlords' application for an Order of Possession is hereby dismissed as withdrawn.

I hereby order the landlords to keep the \$650.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,000.00.

This order is 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: November 12, 2015

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Residential Tenancy Branch

