



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlords: OPR MNR FF  
For the tenant: CNR

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated October 15, 2015, and for an order directing the landlords to comply with the *Act*, regulation or tenancy agreement.

The landlords attended the hearing. The tenant did not attend the hearing. The tenant was provided the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) document dated October 21, 2015 after filing her application. After a ten minute waiting period, the tenant’s application was **dismissed in full, without leave to reapply**, as the tenant failed to attend the hearing to present the merits of her application.

The landlords stated that they served the tenant with the Notice of Hearing, Application for Dispute Resolution Hearing (the “Application”) and documentary evidence on November 12, 2015 addressed to the rental unit address. A registered mail tracking number was submitted as evidenced and supports the testimony of the landlords. Section 90 of the *Act* states that documents served by mail are deemed served five days after they are mailed. As a result, I find that the tenant was deemed served on November 17, 2015. I note that failure to accept or pick up registered mail does not constitute grounds for a Review Consideration. Based on the above, I find the tenant was sufficiently served as of November 17, 2015 with the landlords’ Notice of Hearing, Application and documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The landlords requested to reduce their monetary claim from \$4,744.65 to \$3,147.00 the tenant vacated the rental unit before the end of November 2015 so they are no longer seeking loss of December 2015 rent. In addition, the landlords explained that the water bill portion for the tenant was \$147 versus \$244.65 as indicated in their original monetary worksheet. I find that a reduction in the landlords' monetary claim does not prejudice the tenant, and as a result, I have permitted the landlords to reduce their monetary claim to \$3,147.00, plus the cost of the filing fee pursuant to section 64(3) of the *Act*.

### Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The landlords submitted a copy of the tenancy agreement in evidence. A fixed term tenancy began on March 1, 2015 and was scheduled to revert to a month to month tenancy after February 29, 2016. Monthly rent of \$1,500.00 was due on the first day of each month. A security deposit of \$750.00 was paid by the tenant at the start of the tenancy which the landlords continue to hold.

The landlords are seeking \$1,500.00 for unpaid October 2015 rent and \$1,500.00 for loss of November 2015 rent as the tenant did not vacate the rental unit until November 13, 2015, according to the landlords.

The landlords submitted a copy of the 10 Day Notice dated October 15, 2015 in evidence. As the tenant failed to attend the hearing to present the merits of her Application and her application was dismissed in full, I find the effect on the 10 Day Notice results in an undisputed 10 Day Notice pursuant to section 46 of the *Act*. The 10 Day Notice states that \$1,500.00 in unpaid rent was due on October 1, 2015 and had an effective vacancy date of October 26, 2015. The landlords testified that the tenant continued to occupy the rental unit into the month of November 2015, and the landlords suffered a loss of rent for November 2015 as a result.

The landlords also submitted a copy of a water bill in evidence and testified that as the tenancy agreement did not include utilities, they were seeking recovery of the \$147.00 portion of the water bill submitted in evidence.

The landlords made a verbal request to retain the tenant's security deposit to offset the total amount owing by the tenant to the landlords.

### Analysis

Based on the documentary evidence and the landlords' undisputed testimony, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Landlords' monetary claim** – The landlords testified that the tenant failed to pay \$1,500.00 for October 2015 rent, and that they suffered a loss of November 2015 in the amount of \$1,500.00 as the tenant did not vacate the rental unit until November 13, 2015. Section 26 of the *Act* requires that a tenant pay rent on the day that it is due in accordance with the tenancy agreement. I find that the tenant breached section 26 of the *Act* by failing to pay the full amount of rent on the day that it is due as claimed by the landlord. Therefore, I find the landlords have met the burden of proof and are entitled to monetary compensation of **\$3,000.00** in unpaid rent and loss of rent as claimed.

I find the landlords have provided sufficient evidence to support that the tenant owes \$147.00 for the water bill submitted in evidence as the tenancy agreement does not include utilities. Therefore, I find the landlords have met the burden of proof and are entitled to monetary compensation in the amount of **\$147.00** for the tenant's portion of the unpaid water bill.

As the landlords' claim had merit, I grant the landlords the recovery of their filing fee in the amount of **\$50.00**.

I find that the landlords have established a total monetary claim of **\$3,197.00** comprised of \$3,000.00 in unpaid rent and loss of rent, \$147.00 for the tenant's portion of the unpaid water bill, plus the recovery of the \$50.00 filing fee. I find that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit of \$750.00, which the landlords continue to hold in the total amount, which has accrued \$0.00 in interest to date.

**I ORDER** the landlords to retain the tenant's full security deposit of \$750.00 in partial satisfaction of the landlords' monetary claim, and I grant the landlords a monetary order

pursuant to section 67 of the *Act* for the balance owing to the landlords by the tenant in the amount of **\$2,447.00**.

### Conclusion

The tenant's application has been dismissed in full, without leave to reapply.

The landlords' application is successful.

The landlords have established a total monetary claim of \$3,197.00. The landlords have been ordered to retain the tenant's full security deposit of \$750.00 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlords by the tenant in the amount of \$2,447.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 4, 2016

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Residential Tenancy Branch

