



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants: CNR  
For the landlord: OPR MNR MNSD FF

### 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 tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated November 28, 2015. The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to retain all or part of the tenants’ security deposit and pet damage deposit, and to recover the cost of the filing fee.

The landlord, two witnesses for the landlord, tenant J.P. (the “tenant”), and a tenant advocate attended the teleconference hearing. The parties acknowledged that they were aware that this matter related to cross applications by both parties.

Regarding documentary evidence, the tenant confirmed that the tenants received and had the opportunity to review the landlord’s documentary evidence in advance of the hearing. The tenant also confirmed that the tenants did not submit any evidence in response to the landlord’s application.

### Preliminary and Procedural Matters

The parties agreed that the tenants vacated the rental unit on January 21, 2015, and as a result, the landlord has already obtained possession of the rental unit back from the tenants. Given the above, the landlord withdrew his application for an order of possession.

In addition to the above, the tenant confirmed that the tenants were withdrawing their application in full as the tenants decided to vacate the rental unit. As a result, I have not considered the tenants' application.

During the hearing, the landlord agreed to reduce his monetary claim as there was a dispute between parties as to whether rent was \$1,700.00 per month or \$1,500.00 per month. The landlord testified that he was satisfied with proceeding with rent being \$1,500.00 per month as a result to avoid any further dispute over the amount of the monthly rent.

#### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act* for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on October 20, 2015 and was scheduled to revert to a month to month tenancy after October 31, 2016. Monthly rent of \$1,500.00 was due on the first day of each month. The tenancy agreement indicated that the pro-rated rent for October 20-31, 2015 was \$580.00. A security deposit of \$750.00 and a pet damage deposit of \$500.00 were paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The landlord submitted that the tenants made the following payments:

- \$900.00 cash payment on October 26, 2015
- \$900.00 cash payment on November 13, 2015
- \$500.00 cash payment on November 28, 2015

The tenants claim they paid \$1,080.00 on October 26, 2015, and confirmed that they did not submit any documentary evidence to support this payment such as a bank statement. The parties did agree on the amounts paid for November 13 and November 28 of 2015.

Based on the the landlord's monetary worksheet submitted in evidence, the landlord's monetary claim which was reduced by the landlord during the hearing is as follows:

DESCRIPTION OF ITEM	AMOUNT
1. October 20-31, 2015 pro-rated rent	\$580.00
2. November 2015 rent	\$1,500.00
3. December 2015 rent	\$1,500.00
4. January 2016 rent	\$1,500.00
<b>Sub-Total</b>	<b>\$5,080.00</b>
<i>Less October 26, 2015 cash payment of \$900.00 from tenants</i>	<i>-\$900.00</i>
<i>Less November 13, 2015 cash payment of \$900.00 from tenants</i>	<i>-\$900.00</i>
<i>Less November 28, 2015 cash payment of \$500.00 from tenants</i>	<i>-\$500.00</i>
<b>Total Amount Owning by Tenants to Landlord</b>	<b>\$2,780.00</b>

### Analysis

Based on the documentary the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Claim for unpaid rent** - Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I accept the tenants breached section 26 of the *Act* by failing to pay the full amount of rent owing due to the tenants providing insufficient evidence, such as bank statements, to support they paid the amount they claimed during the hearing. Given the above, I prefer the evidence of the landlord over that of the tenants. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$2,780.00** as indicated in the table above.

As the landlord's application had merit, I grant the landlord the recovery of the cost of the filing fee pursuant to section 72 of the *Act* in the amount of **\$50.00**. As a result, the total monetary claim of the landlord is **\$2,830.00**.

**I authorize** the landlord to retain the tenants' full security deposit of \$750.00 and full pet damage deposit of \$500.00 in partial satisfaction of the landlord's monetary claim. I

grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$1,580.00**.

### Conclusion

The tenants' application was withdrawn.

The landlord's application is successful.

The landlord has been authorized to retain the tenants' full security deposit of \$750.00 and full pet damage deposit of \$50.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$1,580.00. This order must be served on the tenants 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: February 11, 2016

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Residential Tenancy Branch

