



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNR, MNDC, O, FF, MNR, OPR, MNSD, MND

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord. Both files were heard together.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, a request to dispute an additional rent increase, and a request for a monetary order for \$4500.00.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a monetary order for \$9676.39, a request for recovery of the \$100.00 filing fee, and a request to retain the full security deposit of \$1000.00 towards the claim.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed

### Issue(s) to be Decided

At the beginning of the conference call, the parties informed me that the tenants have vacated the rental unit and therefore there is no longer need for me to deal with the request to cancel the Notice to End Tenancy, or the request for an Order of Possession.

The issues I dealt with today then are whether or not the landlord or tenant have established monetary claim against the other, and if so in what amount.

Tenants application

Background and Evidence

The tenants testified that there were many discrepancies in the rental unit when they moved in and as a result they have had to replace carpet with new flooring, paint the entire unit, and remove an extensive amount of garbage, and therefore they believe the landlord should be paying the following:

Flooring installation	\$1500.00
Painting	\$1350.00
Garbage removal	\$300.00
Total	\$3150.00

The tenants also testified that there was a flood on the property that resulted in flood damage totaling \$1000.00.

The tenants also testified that they had numerous problems with the other tenants on the rental property and the landlord failed to do anything about the issues, and as a result they have had a loss of use of enjoyment and in the end had to vacate the rental unit, and therefore they believe the landlord should pay their moving costs of \$600.00.

The tenants are therefore requesting a total monetary claim as follows:

cost of flooring, painting, garbage removal	\$3150.00
Flood damage	\$1000.00
Moving costs	\$600.00
Total	\$4750.00

The tenants are also requesting that a \$50.00 a rent increase given by the landlords be denied as the landlord has never given them a three-month notice of rent increase as required.

In response to the tenant's testimony the landlords testified that they had absolutely no complaints or requests for repairs from the tenants during the tenancy, and none of these claims came to light until after the tenants were served with a Notice to End Tenancy for nonpayment of rent.

The landlords further testified that they were never told there was a problem with the flooring, never told there was a need for painting, never told there was garbage left on the property, and were never told that the tenants had any costs related to flood damage.

The landlords further testified that the tenants never complain to them about the other tenants in the rental property, and in fact they have had complaints from the other tenants about these tenants.

The landlords therefore believe this full claim has been fabricated after the tenants failed to pay the rent and were given a Notice to End Tenancy, and they fail to see how they could have dealt with any of these issues when the tenants never reported any problems to them.

The landlords did admit that they have never given the tenant the required three-month notice of rent increase.

In response to the landlord's testimony the tenants testified that they had reported problems to the landlords verbally, however they had never put anything in writing until after they receive the Notice to End Tenancy for nonpayment of rent.

### Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case, the tenants admit that they never made any written request to the landlords for repairs, or any written complaints to the landlords about problems with the other tenants and therefore, since the landlords deny ever having any complaints from the tenants, or any requests for repairs, it is just the tenants word against that of the landlords, and that is insufficient to meet the burden of proving the tenants claims.

Further, I will not allow the tenants claims for moving expenses, because this tenancy ended due to a Notice to End Tenancy for nonpayment of rent, and under those circumstances the landlord is under no obligation to pay the tenants moving expenses.

It is my finding however that the tenants have shown that the \$50.00 rent increase given by the landlord was not given in compliance with the requirements for giving notice of rent increase, and therefore it is my finding that the \$50.00 increase is not a legal increase.

As stated above the rent increase given by the landlord's was not a legal increase and therefore the monthly rent for this property remains at \$2000.00 per month.

The tenant's monetary claim against the landlord is dismissed in full without leave to reapply.

Landlords application

Background and Evidence

The landlords testified that the tenants failed to pay the January 2016 rent, the February 2016 rent, and failed to give the proper clear one-month Notice to End Tenancy and failed to vacate the rental unit by the end of February 2016 and as a result they are also asking for lost rental revenue for the month of March 2016.

Landlords are also requesting late fees of \$45.00 per month for a total of three months equaling \$135.00.

The landlords further testified that they received the Notice to End Tenancy in writing from the tenants on February 9, 2016, stating they would be vacating by March 1, 2016; however the tenants did not complete their move until March 5, 2016, and in fact there are still some items on the property.

The landlords further testified that the tenants were required to pay 60% of utilities and have failed to do so and therefore they are also requesting an order for those outstanding utilities totaling \$1052.04.

The landlords are also estimating there is a total of \$2239.35 in damages to the property however they are unable to properly estimate damages as they did not have proper access to the rental property.

The landlords are therefore requesting a monetary order as follows:

January 2016 rent outstanding	\$2050.00
February 2016 rent outstanding	\$2050.00
March 2016 lost rental revenue	\$2050.00
Late fees \$45 times three	\$135.00
Outstanding utilities	\$1052.04
Estimated damages	\$2239.35
Filing fee	\$100.00
Total	\$9676.39

In response to the landlord's testimony the tenants testified that they have not paid the January 2016 or February 2016 rent, however they gave proper Notice to End Tenancy and therefore don't believe they should have to pay the March 2016 rent.

The tenants also testified that it was their responsibility to pay the utilities, however they pay their utilities directly to the other tenants on the rental property and therefore it has nothing to do with the landlord.

The tenants also testified that they caused no damages whatsoever at the rental property and therefore don't believe the landlord has any claim for damages.

In response to the tenants testimony the landlords testified that the other tenants of the rental property were only required to pay 40% of the utilities and therefore since the tenants had paid the full amount they have reimburse the other tenants for the \$1052.04 that these tenants were supposed to have paid.

### Analysis

The tenants have admitted that they did not pay the January 2016 or February 2016 rent and therefore it's my finding that the tenants must pay the that outstanding rent; however as I have previously found the landlords rent increase to be improper the tenants must pay \$2000.00 per month for each of those months.

I will not however allow the landlords claim for late fees of the landlords have provided no evidence to show that there was any requirement in the tenancy agreement for the tenants to pay late fees.

It is also my finding that the tenants must pay \$2000.00 to the landlord for lost rental revenue for the month of March 2016 because it's my finding that the tenants have not met the burden of proving that they gave the landlord's one clear month Notice to End Tenancy, nor have they proven that they have removed all of their belongings from the rental property before the end of February 2016.

It is also my finding that the tenants must pay the outstanding utilities to the landlord because the tenants admit they have not paid the utilities and it was a requirement of the tenancy agreement.

I will not issue any order for damages at this time as it's my finding that this claim is premature, as the landlords have not had proper time to assess what if any damages occurred during the tenancy, and therefore I order that the claim for damages to the rental property is dismissed with leave to reapply.

I will allow the landlords claim for recovery of the \$100.00 filing fee.

Therefore the total amount of the claim that I have allowed is as follows:

January 2016 rent outstanding	\$2000.00
February 2016 rent outstanding	\$2000.00
March 2016 lost rental revenue	\$2000.00
Outstanding utilities	\$1052.04
Filing fee	\$100.00
Total	\$7152.04

### Conclusion

I have denied the tenants monetary claim against the landlord, in full, without leave to reapply; however I have allow the tenants request to reduce the rent by \$50.00 due to an illegal rent increase.

I have allowed \$7152.04 of the landlords claim and I therefore order that the landlord may retain the full security deposit of \$1000.00 towards the claim, and pursuant to section 67 of the Residential Tenancy Act I have issued a monetary order for the tenants to pay \$6152.04 to the landlord.

As stated above the landlords claim for damages is dismissed with leave to reapply.

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: March 07, 2016

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Residential Tenancy Branch

