



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the "Act"), for a monetary order for unpaid rent, and for damages to the unit.

The landlords attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on January 29, 2016, Canada post tracking numbers were provided as evidence of service. The landlords stated the packages were successfully delivered to the tenants on February 1, 2016.

I find that the tenants have been duly served in accordance with the Act.

The landlords appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary matters

At the outset of the hearing the landlords requested to amend their application to include loss of rent for February 2016. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlords' application is amended to include a claim for loss of February 2016, rent.

At the outset of the hearing the landlords indicated that they have received a monetary order for January 2016, rent as that was granted through the direct request process.

At the outset of the hearing the landlords sought to further amend their claim for additional damages that were discovered at the end of the tenancy.

As the landlords' application was filed prior to the tenancy ending, I find it would be inappropriate to amend their claim further as the principles of natural justice require that a person be informed and given particulars of the claim against them.

The landlords requested permission to withdraw their claim for loss and damages, in order to have one hearing relating to this issue. I find that request is reasonable and appropriate. Therefore, the landlords claim for damages is withdrawn. The landlords are at liberty to reapply.

### Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The tenancy began on July 1, 2015. Rent in the amount of \$1,000.00 was payable on the first of each month. The tenants did not pay a security deposit. The tenancy ended on February 5, 2016.

The landlords testified that the tenants filed an application to cancel a notice to end tenancy, which was heard on February 5, 2016. The landlords stated that the tenants' application was dismissed as they failed to attend the hearing.

The landlords testified that the tenants had legal possession of the rental unit on February 1, 2016, when rent was due and failed to pay rent.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

### Rules about payment and non-payment of rent

*26 (1) 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.*

The evidence of the landlords was the tenants did not pay any rent for February 2016. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlords.

The landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenants had not breached the Act.

I find that the landlords have established a total monetary claim of **\$1,100.00** comprised of unpaid rent for February 2016 and the \$100.00 fee paid for this application. I grant the landlords an order under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant

### Conclusion

The landlords are granted a monetary order for unpaid rent.

The landlords claim for loss or damages to the rental unit is withdrawn. The landlords are at liberty 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 10, 2016

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Residential Tenancy Branch

