



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

The Tenants also applied for dispute resolution, although failed to attend the hearing. Accordingly, the Tenants' application is dismissed without leave to reapply.

Only the Landlord J.N., appeared at the hearing (hereinafter referred to as the "Landlord"). He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified his wife, P.N., the other named Landlord, and his brother, R.H., personally served the Tenants with the Notice of Hearing and their Application on March 10, 2016; accordingly, I find the Tenants were duly served as of March 10, 2016.

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 Matter

The Landlord testified that the Tenants vacated the rental unit on March 15, 2016. As such, the Landlords no longer sought an Order of Possession as the Tenants had already relinquished possession of the rental unit.

### Issues to be Decided

1. Have the Tenants breached the *Act* or tenancy agreement, entitling the Landlords to monetary relief?
2. What should happen to the Tenants' security deposit?

3. Should the Landlords recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement and which indicated as follows: the tenancy began September 1, 2015; monthly rent was payable in the amount of \$1,500.00; and, a security deposit in the amount of \$750.00 was paid on August 30, 2015.

The Landlord testified that they purchased the rental home on October 23, 2015 with the existing tenancy. He further testified that they reduced the rent to \$1,400.00 as of December 1, 2015 as the Tenants had two small children and stated they found it difficult to pay the \$1,500.00 rental amount.

The Landlord testified that the Tenants failed to pay rent for the month of January 2016 in the amount of \$1,400.00. The Landlord further testified that the Tenants failed to pay the full amount of rent for February 2016 leaving a balance owing of \$200.00 for February. The Landlords issued a 10 day Notice to End Tenancy for non-payment of rent on February 18, 2016 in which they indicated that the amount of \$1,600.00 was due as of January/February 1, 2016 (the "Notice").

The Landlord testified that his wife, P.N. and his brother R.H. personally served the Tenants on February 18, 2016; also introduced in evidence was a letter dated February 18, 2016 which was provided to the Tenants with the Notice. Accordingly, I find that the Tenants were served with the Notice as of February 18, 2016.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, February 23, 2016. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenants filed a Tenant's Application for Dispute Resolution on February 26, 2016.

The Landlord testified that the Tenants also did not pay rent for March 2016. In total the Landlords sought the sum of **\$3,100.00**: representing, \$1,400.00 owing for January 2016; \$200.00 owing for February 2016; \$1,400.00 owing for March 2016; in addition to, the \$100.00 filing fee.

The Landlord also testified that the rental unit was left damaged and unclean by the Tenants and that as of the date of the hearing, April 12, 2016, it had not been re-rented. The Landlords are at liberty to apply for a further monetary compensation for these amounts.

Analysis

Based on the above, the Landlord's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

Under section 26 of the *Residential Tenancy Act*, the Tenants must not withhold rent, even if the Landlords are in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenants had no authority under the *Act* to not pay rent.

I accept the undisputed testimony of the Landlord. I am also persuaded by the February 18, 2016 letter which accompanied the Notice and clearly set out the amounts owing as of that date. I find that the Landlords have established a total monetary claim of **\$3,100.00** comprised of \$1,400.00 owing for January 2016, \$200.00 owing for February 2016 and \$1,400.00 owing for March 2016 in addition to the \$100.00 filing fee.

I order that the Landlords retain the security deposit of \$750.00 in partial satisfaction of the claim and I grant the Landlords an Order under section 67 for the balance due of **\$2,350.00**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

#### Conclusion

The Tenants failed to pay rent and did not attend to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlords may keep the security deposit in partial satisfaction of the claim, and is granted a monetary Order in the amount of **\$2,350.00** for the balance due.

Dated: April 12, 2016

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Residential Tenancy Branch

