



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNR, MNSD, SS, RR, ERP, OLC

### Introduction

The landlords and the tenant convened this hearing in response to applications.

The landlords' application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To dispute a 10 Day Notice to End Tenancy for Unpaid Rent, issued on April 2, 2018;
2. For a monetary order for money loss or other money owed;
3. To have the landlord make repairs to the rental unit;
4. To have the landlord comply with the Act, regulation and/or tenancy agreement;
5. For authorization to change the locks to the rental unit;
6. To have the landlord provide services or facilities by law;
7. To reduce rent for repairs, services or facilities agreed upon but not provided; and
8. To suspend or set conditions on the landlord's right to enter the rental unit.

### Tenant's application

This matter was set for hearing by telephone conference call at 9:30A.M on this date.

The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlords.

Therefore, as the tenant did not attend the hearing by 9:40 A.M, and the landlords appeared and were ready to proceed, I dismiss the tenant's application without leave to reapply.

### Landlords' application

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

The Residential Tenancy Branch Rules of Procedure states that the 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 was sent by registered mail on May 15, 2018, to the service address provided by the tenant in their application.

The Canada post tracking number was provided as evidence of service. The Canada post history shows the package was successfully delivered to the tenant's service address on May 22, 2018. I find that the tenant has been duly served in accordance with the Act.

### Preliminary and procedural matter

In this case, the landlords are seeking monetary compensation for damages; however, the amount claimed in their application conflicts with the amount claimed on the monetary worksheet. As a result, I find it would be unfair and prejudicial to the tenant to proceed on a claim that is unclear. Section 59 of the Act, requires the party to be informed of the claim against them. Therefore, I dismiss this portion of the landlords' claim with leave to reapply.

At the outset of the hearing the landlords requested to amend their application to include the total loss of rent for April 2018, as they thought they were only entitled to prorated rent when they filed their application. 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 rent for the entire month of April 2018.

### Issues to be Decided

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

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on February 1, 2018. Rent in the amount of \$600.00 was payable on the first of each month. The tenant paid a security deposit of \$200.00. The tenancy ended on April 10, 2018.

The landlords testified that on April 2, 2018, the tenant was served with a notice to end tenancy for unpaid rent. The landlords stated that the tenant did not pay the

outstanding rent and vacated the premises on April 10, 2018. The landlords seek to recover unpaid rent in the amount of \$600.00.

### 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-comply 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.*

...

I accept the undisputed evidence of the landlords that the tenant failed to pay rent for April 2018. I find the tenant has 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. Therefore, I find the landlords are entitled to recover unpaid rent for April 2018, in the amount of **\$600.00**.

I find that the landlords have established a total monetary claim of **\$700.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$200.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$500.00**.

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

### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: June 12, 2018

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Residential Tenancy Branch