



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MENKIS CONSTRUCTION LTD.  
and [tenant name suppressed to protect privacy]

## DECISION

### Dispute Codes

For the tenants: CNR, MNDCT, OLC, FFT  
For the landlord: OPUM-DR, FFL

### Introduction

This hearing was convened as a result of the cross-applications of the parties for their respective Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“Act”). The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 3, 2018 (“10 Day Notice”), for a monetary claim of \$225.00 for compensation for damage or loss under the Act, regulation or tenancy agreement, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee. The landlord applied for an order of possession due to unpaid utilities (“parking fees”) and to recover the cost of the filing fee.

An agent for the named landlord company (“agent”) attended the teleconference hearing. The tenants did not attend the hearing. As the tenants did not attend the teleconference hearing to present the merits of their application, the tenants’ application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application only. I confirmed that the teleconference codes, date and time were correct on both the landlord’s and the tenants’ Notice of Dispute Resolution Hearing. I also confirmed that for the entire 27 minute hearing that the landlord and I were the only ones who dialed into the teleconference. The hearing proceeded with the landlord’s application only.

The hearing process was explained to the agent and he was given an opportunity to ask questions about the hearing process. Thereafter the agent gave affirmed testimony, was provided the opportunity to present the landlord’s relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed

all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (“Rules”). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The agent testified that the tenants were served via registered mail on September 21, 2018 with the Notice of a Dispute Resolution Hearing (“Notice of Hearing”), application and the landlord’s documentary evidence addressed to the to the rental unit and with one package for each tenant. The agent also stated that the tenants did not vacate the rental unit until October 13, 2018 and that they were still residing in the rental unit at the time the registered mail was mailed to both tenants. The agent provided the registered mail tracking number for the female tenant. According to the online registered mail tracking website, the female tenant did not claim her registered mail and as a result it was returned to the sender. I accept the landlord’s undisputed testimony that the male tenant’s package was not returned to the sender and as a result, I deem both parties served pursuant to section 90 of the *Act* five days after the packages were mailed on September 21, 2018 which would be September 26, 2018.

I consider the landlord’s application to be unopposed and undisputed by the tenants who did not attend the teleconference hearing.

#### Preliminary and Procedural Matters

The agent confirmed their email address at the outset of the hearing. As the tenants provided their email in their application, the decision will be emailed to both parties and any applicable orders will be sent to the appropriate party.

As the agent confirmed that the tenants vacated the rental unit on October 13, 2018 and no longer requires an order of possession, I will not deal with that aspect of the landlord’s application which I now find to be moot.

#### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- 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 April 1, 2016 and reverted to a month to month tenancy after March 31, 2017.

The agent testified that he served a 10 Day Notice dated September 3, 2018 on September 3, 2018 by posting it to the tenants' door. The tenants applied to dispute the 10 Day Notice on September 6, 2018; however failed to attend this hearing so I find the 10 Day Notice to be undisputed as a result.

The landlord's monetary claim is for \$75.00 for the portion of unpaid parking for the month of September 2018.

### Analysis

Based on the documentary evidence, the undisputed testimony of the agent, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

Firstly, as the tenants failed to attend the teleconference hearing, I consider the landlord's application to be unopposed by the tenants. Secondly, I accept the undisputed testimony that the tenants were aware of the increase in parking fees and failed to pay \$75.00 for parking for the month of September 2018 as claimed. I find the tenants breached the parking fee term of the tenancy agreement as a result.

As the landlord's application was successful, I grant the landlord the recovery of their filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

The landlord has not claimed against the tenants' security deposit as the landlord stated that the tenants have not provided a written forwarding address to the landlord.

I find that the landlord has established a total monetary claim of **\$175.00** comprised of \$75.00 for unpaid parking fees plus recovery of the \$100.00 filing fee. I grant the landlord a monetary order pursuant to section 67 of the *Act* in the amount of \$175.00.

### Conclusion

The application of the tenants has been dismissed in full, without leave to reapply.

The landlord's application is fully successful.

The landlord established a total monetary claim of \$175.00. The landlord has been granted a monetary order pursuant to section 67 of the *Act* in that amount. 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: October 23, 2018

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Residential Tenancy Branch