



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, RP, LRE, MNR

### Introduction

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

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End tenancy for Unpaid Rent (the "Notice") issued on January 2, 2019;
2. To suspend or set condition on the landlord right to enter;
3. To have the landlord make repair to the rental unit; and
4. To recover the cost of filing the application.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary and procedural matter

At the outset of the hearing the tenant stated that they are no longer living in the rental unit. As the tenant is no longer occupying the rental premises, I find it not necessary to consider the tenant's application. Therefore, I dismiss the tenant's application without leave to reapply.

Further, as the tenant has vacated the premises, I find it not necessary to consider the landlord's application for an order of possession.

Issue to be Decided

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

Background and Evidence

The parties agreed that the tenancy began on November 1, 2016. Rent in the amount of \$3,500.00 was payable on the first of each month.

The parties were at a hearing on October 11, 2018, and entered into a mutual agreement that the tenancy would end on March 31, 2019. The tenancy ended on January 30, 2019.

The landlord claims as follows:

a.	Unpaid rent for January 2019	\$2,205.00
b.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$2,305.00</b>

The landlord's agent testified that the tenant did not vacate the unit until January 30, 2019. The landlord stated that there was a flood on December 3, 2018, in the basement that affected 80% of the basement. The agent stated that it did not impact the main floor or the level above. The agent stated that they gave the tenant a reduction of rent in the amount of \$1,295.00. The landlord seeks to recover rent for January 2019, in the amount of \$2,205.00.

The tenant testified that they were living there with three of their employees. The tenant stated that when the flood occurred they discovered that there was lead in the paint. The tenant stated they vacated the premises in December 2018; however, they still had belongings in the property until the end of January 2019. The tenant stated the rental unit was not livable.

### 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 landlord has 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 there was a flood in the basement area that affected 80% of that area. I am not satisfied that the rental unit was unlivable as suggested by the tenant as the main floor and the upper portion of the house were not impacted.

The tenant has provided no evidence from a health professional to indicate there was any health or safety issue.

Further, the email filed in evidence, support that the tenant was attempting to mutually end the tenancy. This is inconsistent with their testimony that the unit was unlivable.

I find the tenant breached the Act, when they failed to pay rent for January 2019 and the landlord suffered a loss. I find the landlord is entitled to recover unpaid rent in the reduce amount of **\$2,205.00**.

I find that the landlord has established a total monetary claim of **\$2,305.00** comprised of the above described amount and the \$100.00 fee paid for this application. I grant the landlord 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 **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant's application is dismissed. The landlord is granted a monetary order in the above noted amount.

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 1, 2019

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Residential Tenancy Branch