



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, OPR, MNR, MNSD

### Introduction

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

The landlords' application is seeking orders as follows:

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

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ;
2. To have the landlord comply with the Act; and
3. To recover the cost of filing the application.

Only the landlord 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 and procedural matters

#### Landlords' application

The landlord 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 landlord testified the Application for Dispute Resolution and Notice of Hearing were served in person on March 11, 2019. I find that the tenants have been duly served in accordance with the Act.

At the outset of the hearing the landlord stated that the tenants have vacated the rental unit and they no longer require an order of possession.

#### Tenants' application

This matter was set for hearing by telephone conference call at 9:30 A.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 landlord. Therefore, as the tenants did not attend the hearing by 9:40 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenants' application without leave to reapply.

#### Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

#### Background and Evidence

The parties entered into a fixed term tenancy which began on January 4, 2019 and was to expire on January 4, 2020. Rent in the amount of \$3,000.00 was payable on the first of each month. The tenants originally paid a security deposit of \$3,000.00. The landlord stated that they did not know they collected an amount greater than the Act allowed and they returned the amount of \$1,500.00 to the tenants. The landlord stated that they hold a security deposit in the amount of \$1,500.00. The tenancy ended on March 24, 2019.

The landlord testified that shortly after the tenancy commenced that they were thinking of listing the property. The landlord stated that the tenants were informed; however, they did not want to have people coming through the rental unit.

The landlord testified that they offered the tenants the return of January 2019, rent and that rent for February 1, 2019 would be free, if they came to a mutual agreement to end the tenancy effective March 1, 2019.

The landlord testified that in good faith they returned to the tenants January 2019, rent in the amount of \$3,000.00, as they believed an agreement would be made.

The landlord testified that the tenants later indicated later because nothing was done in writing that the agreement has no merit. The landlord stated that the tenants were informed that if a mutual agreement is not reached that they are required to pay rent for January 2019, and February 2019. The landlord stated that the tenants did not pay the rent and they were issued a notice to end tenancy. The landlords seek to recover unpaid rent for January 2019 and February 2019 in the amount of \$6,000.00.

The landlord testified that the tenants did not pay any rent for March 2019, and were living in the rental unit. The landlord seeks to recover unpaid rent for March 2019, in the amount of \$3,000.00.

### 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.

In this case, I am satisfied that no mutual agreement was made to end the tenancy by the parties as required by section 44(1)(b)(c) of the Act. This is support by emails that the tenants submitted as evidence.

I am further satisfied that the landlord in good faith returned to the tenants January 2019, rent, which had been paid by the tenants.

I am further satisfied that the tenants were aware that they were required to repay January 2019 and pay February 2019, as per the tenancy agreement. This is supported in the tenants email evidence.

The tenants did not pay the rent. I find the tenants were required to pay the rent as they did not enter into a mutual agreement to end the tenancy. Therefore, I find the landlords are entitled to recover unpaid rent for January and February 2019, in the total amount of **\$6,000.00**.

As the tenants were living in the rental unit for the month of March 2019, they were required to pay rent. I find the tenants breached section 26 of the Act and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover unpaid rent for March 2019, in the amount of **\$3,000.00**.

I find that the landlords have established a total monetary claim of **\$9,100.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$1,500.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$7,600.00**.

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 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: April 12, 2019

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Residential Tenancy Branch