



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD  
and [tenant name suppressed to protect  
privacy]

## **DECISION**

Code MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for money owed or loss, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

The landlord’s agent 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’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on January 14, 2019. Canada post tracking numbers were provided as evidence of service.

The Canada post tracking numbers show the packages were successfully delivered. The tenant IH signed for the package on January 23, 2019. The tenant JW signed for the package on January 31, 2019. I find the tenants were served in accordance with the Act.

The landlord’s agent 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.

Issues to be Decided

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

Is the landlord entitled to monetary compensation for money owed?

Background and Evidence

The parties entered into a tenancy agreement on December 17, 2018, which the tenancy was to begin on January 5, 2019 for a fixed term expiring on January 31, 2020. Rent in the amount of \$1,750.00 was payable on the first of each month. The tenants paid a security deposit of \$875.00.

The landlord claims as follows:

a.	Unpaid rent for January 2019, prorated	\$1,524.15
b.	Liquidated damages	\$ 875.00
c.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$2,499.15</b>

The landlord's agent testified that the tenants entered into a tenancy agreement that was to start January 5, 2019. The agent stated that the tenants did not show up on the move in date. The agent stated that they tried to contact the tenants, by phone and by email; however, the tenants did not respond. The agent stated that due to the tenants' actions they were unable to find a new renter for January 2019. The landlord seeks to recover unpaid rent for January 2019, in the prorated amount of \$1,524.15.

The landlord's agent testified that the tenancy agreement has a clause that if the tenants breach the fixed term agreement that they are entitled to recover liquidated damage for the cost of re-renting the rental unit. The landlord seeks to recover liquidated damages in the amount of \$875.00.

Filed in evidence is a copy of the tenancy agreement, which was signed by both tenants.

## 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.

### **Start of rights and obligations under tenancy agreement**

**16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the tenants entered into a tenancy agreement that was to commence on January 5, 2019. The tenants did not move into the premises as required by their tenancy agreement, nor did they make any attempt to contact the landlord. I find the tenants obligations under the Act were in full force and effect.

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.*

In this case, the tenants were required to pay rent under their tenancy agreement. I find the tenants breached the Act, when they failed to pay rent for January 2019, and this

caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for January 2019, in the prorated amount of **\$1,524.15**.

As the tenants breached the fixed term agreement by failing to move into the premises, I find the landlord is entitled to recover liquidated damages as specified in the tenancy agreement. Therefore, I find the landlord is entitled to recover liquidated damages in the amount of **\$875.00**.

I find that the landlord has established a total monetary claim of **\$2,499.15** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$875.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,624.15**.

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 tenants.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is 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: May 03, 2019

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Residential Tenancy Branch