



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, FF

### 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 utilities; and
3. 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.

### Preliminary and Procedural matters

#### Landlord's 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 May 16, 2019. I find that the tenants have been duly served in accordance with the Act.

The landlord stated that the tenants vacated the property on May 31, 2019 and they do not 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 twenty-five 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 9:55 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenants' application without leave to reapply.

Issues to be Decided

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

Background and Evidence

The tenancy began on June 1, 2017. Rent in the amount of \$2,700.00 was payable on the first of each month. The tenants did not pay the required security deposit. The tenancy ended on May 31, 2019. Filed in evidence is a copy of the tenancy agreement.

The landlord claims as follows:

a.	Unpaid rent	\$21,550.00
b.	Unpaid utilities	\$ 1,710.58
c.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$23,360.58</b>

The landlord testified that shortly after the tenancy started the tenants were having difficulties paying the rent and asked if they could pay a lower rent and make up the difference when male tenant was back to work.

The landlord testified that the tenants did pay rent at the rate of \$1,800.00 per month; however, there was a rent shortage of \$900.00 per month. The landlord stated that they had many promises to pay the balance owed.

Filed in evidence is a spreadsheet showing all rent for the tenancy was \$59,400.00 and payments received was \$37,850.00, leaving a shortfall of \$21,550.00. No late fees or penalties were applied

The landlord testified that they did not evict the tenants earlier because there was always the promise they would pay and that the tenants were also taking care of 4 to 6 children that were in care. The landlord stated that they did not want to impact the children.

The landlord testified that the tenants were required to pay the utilities. The landlord stated that the utilities are provided by the municipality and are billed every six months. The landlord stated the tenants were provided a copy of the invoices; however, they were never paid.

Filed in evidence are copies of the utilities invoices.

### 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.*

...

In this case, the tenants were served with the landlord's application. The tenants did not appear. Therefore, I find the landlord's application is unopposed.

I accept the evidence of the landlord that the tenants were required to pay rent in the amount of \$2,700.00 per month. This is supported by the tenancy agreement. The tenants did not pay the full amount as the rent ledger shows a shortage of \$900.00 for each month.

I accept the evidence of the landlord that there was an agreement that the shortfall of rent would be repaid; however, that did not happen. I find the tenants' breached section 26 of the Act, when they failed to pay the rent noted in the tenancy agreement and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the total amount of **\$21,550.00**.

I accept the evidence of the landlord that the tenants did not pay the utilities. The tenancy agreements support utilities were not included in the rent. I find the tenants breached the tenancy agreement when they failed to pay the utilities for the premise and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$1,710.58**.

I find that the landlord has established a total monetary claim of **\$23,360.58** comprised of the above described amounts and the \$100.00 fee paid for this application.

I grant the landlord an order under section 67 of the Act in the above noted amount.

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. The tenants' application is dismissed without leave to reapply.

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 07, 2019

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Residential Tenancy Branch