



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BOFFO DEVELOPMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR

### Introduction

On March 26, 2019 a hearing was conducted via the Direct Request Process pursuant to section 55(4) of the Act. The landlord served each of the tenants via Canada Post Registered Mail on March 18, 2019 with the Notice of Direct Request Proceeding seeking an order of possession and a monetary order for unpaid rent. The landlord was granted an order of possession and a monetary order for unpaid rent. The tenants applied for a review of this decision for being unable to attend and fraud. The arbitrator ordered the decision and accompanying order suspended pending a review hearing for the landlords' application on the monetary claim only based upon fraud.

This is a review hearing granted for the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenants served the landlord with the notice of a dispute resolution hearing, a copy of the Review Decision and 15 pages of documentary evidence. Both parties confirmed the landlord served the tenants with the submitted documentary evidence by posting it to the tenant's rental unit door on June 6, 2019. Neither party raised any service issues. I accept the testimony of both parties and find that the tenants did properly serve the landlord with the notice of a dispute resolution hearing after the tenant was granted a review of the original decision. Both parties confirmed this package contained the Review Decision and the tenant's 15 pages of documentary evidence. I also accept the undisputed testimony that the landlord served the tenants

with the submitted documentary evidence. On this basis, I find that both parties have been sufficiently served as per section 90 of the Act.

At the end of the hearing, the tenants argued that they would like an adjournment to be able to submit additional documentary evidence. The tenants claimed that they need more time to read the landlord's submitted documentary evidence, more time to submit any documentary evidence in dispute of the landlord's claims. When asked specifically what documents were needed to be reviewed or what evidence needed to be submitted, the tenants were unable to specifically identify any issues. The tenants argued that they are parents with children and that they only had 2 days to review the landlord's evidence to participate in this hearing. I find in the circumstances without any specific details of additional evidence required to respond to any issues, that the tenants request for an adjournment is unnecessary and is dismissed.

At the conclusion of the hearing, the tenants provided a new mailing address for delivery of this decision. The Residential Tenancy Branch Filed was updated to reflect this new address.

#### Issue(s) to be Decided

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

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 1, 2016 on a fixed term tenancy ending on June 30, 2017 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated June 26, 2016. The monthly rent began at \$1,250.00 payable on the 1<sup>st</sup> day of each month and later became \$1,347.00 based upon two successful notice(s) of rent increase(s) for July 1, 2017 from \$1,250.00 to \$1,296.00 and August 1, 2018 from \$1,296.00 to \$1,347.00.

The landlord's monetary claim is for \$1,497.00 which consists of:

\$150.00	Unpaid Rent, November 2017
\$1,347.00	Unpaid Rent, March 2019

The landlord claimed that the tenant did not pay all of the rent for the above noted time(s). The landlord claims that the tenants failed to provide proper 1 month notice to end the tenancy and as such the landlord suffered a loss of rental income for March 2019 of \$1,347.00. In support of these claims, the landlord submitted a copy of November 2017 NSF cheque returned by the bank for the tenant's rent; copies of emails dated January 2018 to April 2018 regarding a payment plan agreement between the two parties on rental arrears.

The tenants argued that rent for March 2019 was not owed as they had already given notice to end the tenancy on January 31, 2019 for February 28, 2019. As such, the tenants did not even occupy the rental unit for March 2019. The tenants admitted that rental arrears were owed of \$150.00 were owed for November 2017.

The landlord disputed the tenants' claims stating that no notice to end the tenancy was received.

The tenants argued that a copy of the January 31, 2018 letter was submitted as part of the Review Consideration Application. A review of the Review evidence does provide for a copy of a hand written letter dated January 31, 2018 for notice to end the tenancy on February 28, 2019.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I find that the landlord has established a claim for a monetary order for \$1,497.00 in unpaid rent. Both parties confirmed that the tenants vacated the rental unit leaving outstanding arrears from November 2017 of \$150.00. The landlord has claimed that the tenants vacated the rental unit without notice and had suffered a loss of rent of \$1,347.00 for March 2019. However, the tenants have argued that a written notice to

end the tenancy dated January 31, 2019 was served to the landlord to end the tenancy on February 28, 2019. A copy of this notice was not submitted in the tenants' documentary evidence submission, but a copy was found submitted as part of the tenants' Review Consideration Application. However, the landlord has disputed that no such notice was received. The tenants did not provide sufficient evidence of any details of service of this notice. On this basis, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant.

### Conclusion

The landlord's monetary order dated March 26, 2019 for \$1,597.00 is confirmed.

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 11, 2019

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Residential Tenancy Branch