



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding CANADIAN NATIONAL RELOCATION LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

For the tenants: CNR MNDCT OLC RP PSF FFT  
For the landlord: OPR-DR OPRM-DR MNRL-S FFL

### **Introduction**

This hearing was convened as a result of an Application for Dispute Resolution (application) of both parties seeking remedy under the *Residential Tenancy Act* (the Act).

The tenants applies to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice), for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for regular repairs to the unit, site or property, for an order directing the landlord to provide services or facilities agree upon, but not provided and to recover the cost of the filing fee.

The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenants' security deposit and pet damage deposit, and to recover the cost of the filing fee.

The landlord agent TK (agent) and tenant JB (tenant) attended the teleconference hearing. The hearing process was explained, evidence was reviewed, and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) and testimony provided.

Neither party were able to prove that they were not served by the other party. As a result, the parties were advised that I would consider both applications, with the exception of a portion of the tenants' application, which I will described below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

At the outset of the hearing, the parties confirmed that the tenants have vacated the rental unit and as a result, the landlord does not require an order of possession. I will therefore not consider an order of possession at this proceeding.

In addition, Rule 2.3 of the RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on their application, the most urgent of which is to dispute the 10 Day Notice. I find that not all the claims on the tenants' application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 10 Day Notice and for the recovery of the filing fee, and the landlords' request for unpaid rent and loss of rent at this proceeding. The balance of the applications for the tenants are **dismissed, with leave to re-apply**. I note that my decision does not extend any applicable timelines under the Act.

As the tenants have vacated the rental unit, I note the 10 Day Notice is now moot, as the tenancy has ended. The tenants claim they vacated the rental unit on March 30, 2020, while the agent testified that they consider the tenancy end date of April 9, 2020. Given the above, I will not consider the 10 Day Notice further as the tenancy has ended since the parties filed their respective applications. The agent also stated that they are no longer requesting to offset any amount owed with the tenants' security deposit and pet damage deposit as they have not been served with the tenants' written forwarding address since the tenants vacated. As a result, I will not address the security deposit or pet damage deposit further in this decision.

In addition to the above, the agent was advised that loss of rent beyond March 2020 and repairs was premature at the time of the hearing as rent for April 2020 was not due until April 28, 2020. The agent was advised that future loss of rent and repairs was premature at the time the landlord submitted their two application on March 12, 2020 and March 17, 2020, respectively. Therefore, I grant the landlord leave to reapply for future loss of rent beyond March 2020 and repairs/damages.

Furthermore, the parties confirmed their email addresses at the outset of the hearing. The parties also stated that they understood that the decision would be emailed to the parties. Any resulting monetary order will be emailed to the appropriate party for service on the other party.

### Issues to be Decided

- Are the landlords entitled to a monetary order for unpaid rent, and if so, in what amount?
- Is either party entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 28, 2019 and required vacant possession on March 30, 2020. I note that although the tenancy agreement stated March 30, 2019, that neither party disputed that 2019 was an obvious error and should have read 2020 as the tenancy began on September 29, 2019. According to the tenancy agreement, monthly rent of \$6,850.00 is due on the 28<sup>th</sup> day of each month. The tenants paid a security deposit of \$3,425.00 and a pet damage deposit of \$3,425.00 at the start of the tenancy, which the landlord continues to hold.

The agent testified that the tenants owe \$6,850.00 for unpaid rent for February 2020, which was due February 28<sup>th</sup>, 2020. The agent also stated that they are seeking loss of March 2020 rent of \$6,850.00 as the tenants did not vacate until April 9, 2020. The tenant questioned whether the agent was permitted to rent to them in the first place. The agent testified that they had permission to sublet the rental unit from the landlord with whom the agent has a tenancy agreement and as a result, was acting as the landlord in the tenancy agreement before me.

The agent testified that due to the tenants failing to vacate the rental unit by March 30, 2020, the agent lost their new tenant who was supposed to move-in on April 1, 2020. According to the agent, their new tenant ended up having to find a new place as the tenants refused to move out in accordance with the fixed-term tenancy. The landlord cited section 13.1 of the *Residential Tenancy Regulation* (Regulation) as their reason for ending the fixed-term tenancy, which I will address later in this decision.

The tenants did not deny that rent for February 2020 was not paid to the landlord. There was no evidence before me that rent due March 28, 2020 was paid by the tenants. The agent stated that the rental unit remains vacant.

Regarding the rental unit keys, the tenants stated that they gave the rental unit keys to the building concierge instead of the agent. The agent stated that providing the keys to the concierge was not following the Act and that the agent did not receive the keys until April 9, 2020.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Landlord's claim for rent for February and March of 2020** – The landlord has claimed \$6,850.00 for February 2020 and \$6,850.00 for March 2020. The tenant did not provide any supporting evidence that the tenant paid rent for either of the months claimed. Therefore, I find the tenants breached section 26 of the Act, which states that tenants must pay rent on the date in which it is due in accordance with the tenancy agreement. I also find the tenants provided insufficient evidence that they had any right under the Act to withhold rent. Therefore, I find the landlord has met the burden of proof and that the tenants owe \$6,850.00 for unpaid February 2020 rent due February 28, 2020. I also find the tenants breached section 37(2)(b) of the Act, which states:

#### **Leaving the rental unit at the end of a tenancy**

**37(2)** When a tenant vacates a rental unit, the tenant must

**(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

[Emphasis added]

Section 37(2)(b) of the Act does not state to leave the rental unit keys with a concierge, it says to give the landlord all the keys or other means of access that are in the possession or control of the tenant and as a result, I find the tenants did not end the tenancy until April 9, 2020, when the agent was finally able to obtain the keys to the rental unit. As a result, I find the tenants are liable for the loss of rent for March 2020, which was due on March 28, 2020 in the amount of \$6,850.00.

Based on the above, I find the landlord is entitled to rent owing for the months of February and March of 2020, in the amount of \$6,850.00 per month for a total of **\$13,700.00** in unpaid rent and loss of rent as claimed.

As the landlord was successful with the portion of their application that proceeded, I find the landlord is entitled to **\$100.00** pursuant to section 72 of the Act for the recovery of the cost of the filing fee. Given the above, I find the landlords have established a total monetary claim of **\$13,800.00**. As a result, I grant the landlord a monetary order pursuant to section 67 of the Act for the amount owing by the tenants to the landlord in the amount of **\$13,800.00**.

Regarding section 13.1 of the Regulation, that section reads as follows:

**Fixed term tenancy — circumstances when tenant must vacate at end of term**

**13.1**(1) In this section, "close family member" has the same meaning as in section 49 (1) of the Act.

(2) For the purposes of section 97 (2) (a.1) of the Act [*prescribing circumstances when landlord may include term requiring tenant to vacate*], the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that

(a)**the landlord is an individual, and**

(b)that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

[Emphasis added]

I find the landlord does not meet the definition as the landlord is a company and not an individual. As a result, I **caution** the landlord not to attempt to rely on section 13.1 of the Regulation when the landlord is a company and is not an individual.

I do not grant the filing fee to the tenants as their application was not successful.

Conclusion

The portion of the tenants' application that was severed as noted above, is dismissed with leave to reapply.

The landlord's application is successful. The landlord has been granted a monetary order pursuant to section 67 of the Act for the amount owing by the tenants to the landlord in the amount of \$13,800.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned as noted above regarding section 13.1 of the Regulation.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 14, 2020

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Residential Tenancy Branch