



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPR-DR, OPRM-DR, FFL**

### **Introduction**

This participatory hearing was scheduled pursuant to an Interim Decision issued by an Adjudicator on March 26, 2021 in response to the landlord's application for an Order of Possession and Monetary Order for unpaid rent made on March 8, 2021 under the Direct Request procedure.

The Interim Decision should be read in conjunction with this decision.

At the participatory hearing, only the landlords appeared. Since the tenants did not appear, I explored service of the Notice of Dispute Resolution Proceeding and Interim Decision upon the tenant, as so ordered in the Interim Decision of March 26, 2021.

The landlords testified they sent the Notice of Dispute Resolution Proceeding and Interim Decision, and a copy of the correct 10 Day Notice to End Tenancy for Unpaid Rent, to each tenant via email on April 1, 2021.

In the Interim Decision of March 26, 2021, the Adjudicator required the landlords to serve the tenants with notification of the adjourned hearing in a manner that complies with section 89 of the Act. Effective March 1, 2021 section 89 of the Act and the Residential Tenancy Regulations were amended to include service of documents by email by using an email address provided by the person being served.

The landlords provided text messages exchanged with the tenants whereby the tenants provided their email addresses for receiving documents from the landlords (email addresses are provided on the cover page of this decision); and, the landlords provided a copy of the emails sent to the tenants on April 1, 2021 with the hearing documents described above. Upon review of this evidence, I find I am satisfied the tenants provided the landlords with email addresses for receiving documents and the landlords

sent the Notice of Dispute Resolution Proceeding and Interim Decision to the tenants at that those email addresses. Therefore, I find the landlords met their obligation to serve the tenants in accordance with section 89 of the Act and I continued to hear from the landlords without the tenants present.

The landlords testified the tenants vacate the rental unit near the end of March 2021, on March 27 or 28, 2021, and an Order of Possession is no longer required. Accordingly, the remainder of this decision pertains to the landlord's monetary claim for unpaid rent only.

#### Issue(s) to be Decided

1. Are the landlords entitled to recovery of unpaid and/or loss of rent from the tenants?
2. Award of the filing fee.

#### Background and Evidence

The tenancy started on May 1, 2019 and the tenants paid a security deposit of \$700.00. The tenants were required to pay rent of \$1400.00 on the first day of every month.

On February 11, 2021 the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid rent ("10 Day Notice") by posting it to the door of the rental unit. The 10 Day Notice indicates \$1500.00 was outstanding as of February 1, 2021 and an effective vacancy date of February 22, 2021. The landlords testified that the sum of \$1500.00 reflects rent of \$100.00 that outstanding for the month of January 2021 at that time and rent of \$1400.00 for the month of February 2021.

The landlords provided a copy of the above described 10 Day Notice after the Interim Decision was issued. The landlord explained she erroneously uploaded the a previously issued 10 Day Notice in originally filing the Application for Dispute Resolution by Direct Request.

The landlords testified that after serving the 10 Day Notice the tenants did make partial payments in February 2021 and March 2021 but a balance of \$250.00 remains outstanding for the February 2021 rent and no monies was received for the month of March 2021 despite the tenants' continued occupation of the rental unit, causing the landlords to suffer a further loss of rent of \$1400.00 for the month of March 2021. The landlords are seeking to recover the sum of \$1650.00 for these two months after taking

into account all of the payments received from the tenants, which is less than the amount claimed on the Application for Dispute Resolution filed on March 2021.

As for the security deposit, the landlords stated they wished it to retain in trust, to be administered at a later date in accordance with the Act.

Documentary evidence provided to me included a copy of: the tenancy agreement; the 10 Day Notice issued in February 2021; Direct Request worksheet; Proof of Service of the original proceeding packages; and, various text messages and emails between the parties provided in an effort to prove service by email.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold or otherwise not pay the rent due to the landlord.

Based on the unopposed evidence before me, I find the tenants were required to pay rent of \$1400.00 on the first day of every month and they failed to do so. I was not provided any evidence to suggest the tenants had a legal right to withhold rent from the landlords. Accordingly, I accept that the tenants, after making all of their partial payments, still owe the landlords rent of \$250.00 for the month of February 2021.

Considering the tenants were served with a 10 Day Notice on February 11, 2021, requiring them to vacate the rental unit 10 days after receiving the 10 Day Notice, I find the tenants further violated the Act by retaining possession of the rental unit until March 27 or 28, 2021, causing the landlords to further suffer loss of rent for the month of March 2021. Therefore, I grant the landlords' request to recover loss of rent of \$1400.00 for the month of March 2021.

I further award the landlords recovery of the \$100.00 filing fee they paid for this Application for Dispute Resolution.

In keeping with all of the above, I provide the landlords with a Monetary Order in the sum of \$1750.00 [calculated as: \$250.00 for February 2021 + \$1400.00 for March 2021 + \$100.00 for the filing fee] to serve and enforce upon the tenant.

The landlords did not request authorization to retain the tenant's security deposit in partial satisfaction of the unpaid and/or loss of rent and the security deposit remains in trust for the tenants, to be administered in accordance with section 38 of the Act.

Conclusion

The landlords are provided a Monetary Order in the sum of \$1750.00 to serve and enforce upon the tenants. The security deposit remains in trust for the tenants, to be administered in accordance with section 38 of the Act.

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 27, 2021

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Residential Tenancy Branch