



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      For the tenants: CNR, LRE, LAT, FF  
For the landlord: OPR, MNR, MNDC, FF

### **Introduction**

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), an order suspending or setting conditions on the landlord’s right to enter the rental unit, an order authorizing the tenants to change the locks to the rental unit, and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application.

All parties attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me, and respond to the other’s evidence.

At the outset of the hearing, neither party raised any issues regarding service of the applications or the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter*-This tenancy ended prior to the hearing, and as a result, the tenants no longer required consideration of their application, as these are issues related to a request to continue the tenancy and for matters involving an ongoing tenancy.

As the tenancy has ended, the landlord as well no longer required consideration of her request for an order of possession for the rental unit, and I have excluded this request.

The hearing proceeded on the landlord's request for monetary compensation.

#### Issue(s) to be Decided

Is the landlord entitled to monetary compensation?

#### Background and Evidence

The tenants submitted that this tenancy began on December 1, 2014, ended on March 29, 2015, and that monthly rent for the rental unit was \$2000.00. The parties agreed that there was no security deposit paid and there was not a written tenancy agreement.

The landlord initially agreed the tenancy began on December 1, 2014, but later said it began in November 2014. In explanation, the landlord submitted that the tenants originally moved into the lower suite of the home, and in December, moved into the upper unit. The landlord submitted that monthly rent was a total of \$2600.00, \$2000.00 for the use of the home and \$600.00 for use of the paddocks, hay storage, tack storage, and riding ring for the horses boarded by the tenants.

The landlord's monetary claim is in the amount of \$4360.00. The landlord did not provide a detailed calculation, but submitted a statement saying that rent for November was \$2000.00, and \$300.00 was paid; rent for December of \$2600.00 was paid; rent for January was \$2600.00 and \$2300.00 was paid; rent for February was \$2600.00 and \$2300.00 was paid, and; rent for March was \$2000.00 and \$2000.00 was paid.

The landlord also claimed a security deposit of \$2000.00, which was never paid.

The landlord's written submissions explained that the tenants boarded 6 horses at the beginning of the tenancy and that during the tenancy, the number of horses boarded by the tenants decreased, with a corresponding reduction in the \$600.00 owed by the tenants for this portion of the tenancy agreement.

The landlord submitted that the tenants were served a Notice on March 4, 2015, listing unpaid rent of \$2360.00 owed as of March 1, 2015.

The landlord confirmed rent was paid in cash and receipts were not always issued.

The landlord additionally submitted written statements about the alleged behaviour of the tenants during the tenancy.

*Tenants' response-*

The tenants restated that the tenancy began on December 1, 2014, for the upstairs portion of the home, and that the agreement concerning payment for the paddocks use, of \$600.00 was a separate agreement.

The tenants submitted that all monthly rent was paid when they received the Notice and as proof, the receipt for the March payment was attached.

The tenants' documentary evidence included alleged issues about the tenancy and actions of the landlord.

Analysis

I have reviewed all evidence, but have only referred to the relevant evidence as to whether or not the tenants owed unpaid rent to the landlord and have not addressed allegations relating to either party's behaviour.

In this case, the landlord has claimed unpaid rent, in part for the living space for \$2000.00 and in part for rental of paddocks for boarding horses for \$600.00. There was, however, no dispute that as to the \$600.00 rent for boarding horses, this amount fluctuated, depending upon the number of horses boarded by the tenants.

Under section 1 of the Act, rent is defined as money or value paid by a tenant to the landlord for the right to possess a rental unit. A rental unit is defined as living accommodation rented or intended to be rented by a tenant.

In the absence of a written tenancy agreement provided by the landlord as required under the Act clearly laying out the terms and conditions of this tenancy, I find the evidence supports that the fluctuating amount owed by the tenants for use of the paddocks, hay storage, tack storage, and riding ring, originally \$600.00, but \$0.00 by March 2015, was not part of the tenancy agreement for this tenancy. I find, rather, that

the agreement for the use of the paddocks was a separate agreement unrelated to this tenancy, and I therefore find I have no jurisdiction under the Act to decide the issue of alleged unpaid sums relating to the tenants' boarding of horses.

Due to this, I am only able to decide whether or not the tenants paid the amount of \$2000.00 monthly during this tenancy, as all parties agreed this was the amount owed for the living accommodation of the tenants in the upper unit.

Although the landlord claimed there was unpaid rent for November 2014, I am unable to accept that this was the case. The rental unit in question in this case is the upper unit of the home, and I therefore find the monthly rent obligation of the tenants for \$2000.00 began in December 2014, for the upper unit. The landlord's evidence shows that for the 4 months of this tenancy, December 2014 and January, February, and March 2015, the tenants paid, respectively, \$2600.00, \$2300.00, \$2300.00, and \$2000.00.

I therefore find that the tenants did not owe monthly rent for this rental unit when the tenancy ended on March 29, 2015, and that the excess paid by the tenants was applied to the separate paddocks, hay storage, tack storage, and riding ring.

As to the landlord's claim for the security deposit, a security deposit or pet damage deposit is collected by the landlord and held in trust for the tenant during the tenancy; likewise the security deposit and pet damage deposit must be dealt with in accordance with section 38 of the Act at the end of the tenancy.

The failure by the tenants to pay a security deposit or pet damage deposit when required by the written tenancy agreement would be a cause sufficient to end the tenancy.

As I informed the landlord, I am unable to award the landlord a security deposit only to order either that the landlord return the security deposit to the tenants or retain the deposit in partial satisfaction of any monetary award. I therefore decline to award the landlord a monetary award for a security deposit.

For the reasons above, I find the landlord submitted insufficient evidence to support her monetary claim that the tenants owed unpaid rent and a security deposit and I therefore dismiss her application, without leave to reapply.

Conclusion

The tenants' application is dismissed for the reason the tenancy has ended and they no longer required consideration of their request to cancel the landlord's Notice and for orders for the landlord as these are matters relating to an ongoing tenancy.

The landlord's application is dismissed.

No monetary orders are being issued in this matter as the tenants do not have a security deposit held by the landlord.

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 18, 2015

---

Residential Tenancy Branch

