



# 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 landlords and the tenants convened this hearing in response to applications.

The landlords' 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

#### Landlords' application

The landlords 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 landlords testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on January 26, 2019, the Canada post tracking number shows the package was successfully delivered to the tenants on February 2, 2019.

I find that the tenants have been duly served in accordance with the Act.

### Tenants' application

This matter was set for hearing by telephone conference call at 11:00 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Respondent. Therefore, as the Applicant did not attend the hearing by 11:10 A.M, and the landlords appeared and was ready to proceed, I tenants' application is dismiss without leave to reapply.

### Issues to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

Based on the testimony of the landlords, I find that the tenants were served with a notice to end tenancy for non-payment of rent on January 7, 2019. This was acknowledged in the tenants' application. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

The tenancy began on September 25, 2017. Rent in the amount of \$780.00 was payable on the 26<sup>th</sup> day of each month. No security deposit was paid.

The landlords testified that the tenants did not pay rent for December 2018 that was due on the 26<sup>th</sup> day. The landlords stated that the tenants also failed to pay rent for January 2019, due on the 26<sup>th</sup> day. The landlord seeks to recover unpaid rent in the amount of \$1,560.00.

The landlords testified that the tenants did not pay their portion of utilities for January 2019, in the amount of \$127.92. The landlord seeks to recover unpaid utilities in the said amount.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenants have not paid the outstanding rent. Although the tenants' filed their application to dispute the notice to end tenancy, if find their application had not merit as rent was not paid. Further, the tenants' application was dismissed and pursuant to section 55 of the Act the landlords is entitled to an order of possession.

I find that the landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I am further satisfied that the tenants did not pay rent for December 2018 January 2019 and utilities for January 2019. Therefore, I find the landlords are entitled to recover unpaid rent and utilities in the amount of **\$1,687.92**.

I find that the landlords have established a total monetary claim of **\$1,787.92** comprised of unpaid rent, utilities, and the \$100.00 fee paid by the landlords for this application. I grant the landlords an order pursuant to section 67 of the Act. 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.

The landlords were also seeking unpaid rent for February 2019, loss of revenue and damage to the ceiling.

I find rent for February 2019, is not due until February 26, 2019 and that this portion of their claim is premature, as this hearing was prior to the date rent is owed.

Further, I find any claim for loss of future rent is premature as the landlords have an obligation to mitigate their loss by attempting to re-rent the premise as soon as they are aware that the tenants are vacating. I find this portion of their claim premature.

Although I accept there may be damage to the ceiling; however, the tenants may make the necessary repair prior to leaving. I find this portion of their claim is premature.

Therefore, I find the landlords claim for February 2019 rent, loss of rent for 2019 and damages is premature. The landlords are granted leave to reapply for any further loss they may suffer as a result of the tenants breaching the Act.

Conclusion

The tenants failed to pay rent. The tenants' application is dismissed without leave to reapply.

The landlords are granted an order of possession, and a monetary order in the above noted amount.

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: February 22, 2019

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Residential Tenancy Branch