



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for an order of possession, for a monetary order for unpaid rent, for damages to the unit and to recover the cost of the filing fee.

The landlord 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 landlord testified the Application for Dispute Resolution and Notice of Hearing were served on the tenant NS on August 21, 2020. The tenant GL was served by registered mail sent on August 21, 2020 and received on August 25, 2020, a Canada post tracking number was provided as evidence of service.

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

The landlord testified that the tenants were served with their amended application on September 11, 2020, in person. I find the tenants were served with the landlord’s amended application on this date.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to monetary compensation for damages?

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

Background and Evidence

The tenancy began on July 1, 2020. Rent in the amount of \$850.00 was payable on the first of each month. The tenants only paid a portion of the required security deposit in the amount of \$100.00. The tenants' rent a room and the common area of the premise was shared with another occupant.

The landlord claims as follows:

a.	Unpaid rent for August and September 2020	\$1,700.00
b.	Damage to the common area	\$ 861.39
c.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$2,661.39</b>

The landlord testified that the tenants were served with a One Month Notice to End Tenancy for Cause on August 2, 2020, in person. Filed in evidence is a video which the tenant NS admitted it was received and not disputed.

The landlord testified that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent, issued on September 2, 2020. The landlord stated the tenants did not dispute the notice to end tenancy and rent was not paid. The landlord stated that they are unsure if the tenants have vacated the premise and seek an order of possession.

The landlord testified that the tenants did not pay any rent for August and September 2020. The landlord seeks to recover unpaid rent for the said months in the amount of \$1,700.00.

The landlord testified that the tenants only rented a room and shared the common area with another occupant. The landlord stated that because of the domestic fighting between the tenants the other occupant vacated.

The landlord testified that the tenants caused damage to the common area due to their fight, as two doors were broken as they had holes in them from punching and or kicking. The landlord stated that the doors must be replaced as they are not fixable.

The landlord testified that the one of the doors handle and lock were removed, and they have to purchase a new one.

The landlord testified that there were holes punch in the drywall and dents. The landlord stated that they have to have the drywall patched, filled and repainted.

The landlord testified that they will also have to do an extensive cleaning of the common area due to the damage. The landlords stated they have not been able to make the repairs; however, they have obtained estimates based on the damage. The landlords seek to recover the estimated cost of the repairs in the amount of \$861.39.

The landlord testified that they have not had an opportunity to inspect the room that the tenants rented and there is likely damage. The landlord stated that they will file a later application if they determine necessary.

Filed in evidence are photographs and videos. The photographs show doors and walls with holes punched in them. The video show fighting and yelling between the tenants and they further show the tenant NS, threatening to kick the landlord's teeth in and spray them with bear spray.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case the tenants were served with two different notices to end the tenancy. Neither, notices were disputed, nor was the rent paid. I find the tenancy was conclusively presumed to have legally ended, pursuant to section 46(5) and 47(5) of the Act on the effective date in the notices.

I find 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 must be served on the tenants and may be filed in the Supreme Court.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

### **Rules about payment and non-payment of rent**

***26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

I accept the undisputed testimony of the landlords that the tenants failed to pay rent for July and August 2020. I find the tenants have breached the Act and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover unpaid rent for the said months, in the total amount of **\$1,700.00**.

I accept the undisputed testimony and evidence of the landlords that the tenants caused extensive damage to the common area of the rental unit do to domestic violence. The landlords' photographs and videos support this. I find the tenants breached the Act, when they caused damage to the rental premise. Therefore, I find the landlords are entitled to recover the cost of repairing the common area of the premise in the estimated amount of **\$861.39**.

This order does not in any way interfere with the landlords' right to claim for damage of the room to which was rented by the tenants as the landlords had not had a change to determine this. This order is only related to damages caused in the common area.

I find that the landlords have established a total monetary claim of **\$2,661.39** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$100.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$2,561.39**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The landlords are granted an order of possession. The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: October 01, 2020

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Residential Tenancy Branch