



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPC, MNR, MNSD, FF  
                                 Tenants: CNC, RP

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order and the tenants sought to cancel a notice to end tenancy and an order to have the landlord make repairs to the rental unit.

The hearing was conducted via teleconference and was attended by the landlord and one of the tenants. The landlord had arranged for a witness to attend to provide testimony regarding the order of possession, however it was determined during the hearing there was no need for the witness's testimony.

At the outset of the hearing the parties agreed the tenants had vacated the rental unit prior to the hearing and the landlord agreed there was no longer a need for him to obtain an order of possession and I accepted his amendment to exclude this matter from the dispute.

The tenant had applied to cancel the notice to end tenancy and for an order for the landlord to make repairs and despite his confirmation he no longer lives at the dispute address, he did not withdraw his application.

The landlord had included a receipt for cleaning the rental unit after the tenants vacated the property, however, the landlord had not applied for any compensation for damage or loss to the rental unit and as such, I did not allow the landlord's amendment to the monetary amount sought. The landlord remains at liberty to file a separate application for any other damages he may have suffered as a result of this tenancy.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided if the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause; to an order requiring the landlord to make repairs; and to recover the filing fee from the landlord for the cost of the Application for Dispute

Resolution, pursuant to Sections 32, 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on December 27, 2007 for a 1 year fixed term tenancy that converted to a month to month tenancy for a monthly rent, at the end of the tenancy of \$1,227.60 due on the 1<sup>st</sup> of each month. The agreement states the tenants paid a security deposit of \$600.00.

The landlord also submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause dated June 23, 2011 with an effective vacancy of July 31, 2011. The tenant testified the day the landlord issued the 1 Month Notice, he and the landlord had a verbal agreement that the tenants would move out by July 11, 2011 and that the landlord would use the security deposit for rent for the period of time.

The landlord testified that he had no discussions with the tenants about them moving out earlier than the effective date of the notice or regarding the use of the security deposit to go towards any rent outstanding. The landlord testified the tenants vacated the rental unit on July 13, 2011. The landlord seeks compensation for rent for the month of July 2011.

### Analysis

As the tenants vacated the rental unit on or before July 13, 2011, thus accepting the end of the tenancy, as such, I find the tenants have accepted the end of the tenancy in accordance with the 1 Month Notice to End the Tenancy for Cause and dismiss this portion of the tenants' Application.

In relation to the tenants' Application for an order to have the landlord's make repairs, I find that since the tenancy no longer exists, resulting from the tenant accepting the end of the tenancy and vacating the rental unit, the landlord no longer has any obligations to make repairs under the *Act*. I therefore dismiss this portion of the tenants' Application.

As the tenants have been unsuccessful in their Application for Dispute Resolution, I dismiss their Application to recover the filing fee from the landlord for the cost of their Application for Dispute Resolution.

In regard to the landlord's claim for the payment of rent for the month of July 2011, I find that where verbal terms of an agreement are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was or was not agreed-upon, any agreement is virtually impossible for a third party to interpret when trying to resolve disputes.

As such and in the absence of any corroborating evidence from the tenant to a verbal agreement of any kind, I find that no mutual agreement had been reached by the parties and I will rely upon the obligations under the *Act* to determine if the tenants owe any rent to the landlord.

Section 47 states that a landlord may ending a tenancy for cause with an effective date that is not earlier than 1 month after the date the notice is received, and the day before the day in the month that rent is a payable. I accept the 1 Month Notice issued to the tenant indicates an effective date of July 31, 2011 is in accordance with Section 47.

Section 45 stipulates that a tenant may end a tenancy by giving the landlord notice of their intention to do so, in writing, that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

As I have found there was no mutual agreement to end the tenancy, I find the earliest possible date the tenancy could have ended under either Section 45 or 47 would be July 31, 2011.

Section 26 of the *Act* states a tenant must pay rent when it is due under the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. As the tenancy was in full force and effect on July 1, 2011, when rent was due under the tenancy agreement, I find the tenants must pay the landlord rent for the full month of July 2011.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,277.60** comprised of \$1,227.60 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$609.20 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$668.40**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: July 28, 2011.

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Residential Tenancy Branch