



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – CNR, ERP, RP, RR, FF

For the landlord – OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The tenants applied to cancel the Notice to End Tenancy for unpaid rent; for an Order for the landlord to make emergency repairs for health or safety; for an Order for the landlord to repair the unit, site or property; to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application. The landlord has applied for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing although the tenants' evidence was only sent the day before the hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find the tenants have applied for an Order for the landlord to make emergency repairs for health or safety; for an Order for the landlord to repair the unit, site or property; to reduce rent for repairs, services or facilities agreed upon but not provided. I find as these sections are unrelated to the main part of the application to cancel the 10 Day Notice for unpaid rent that these sections will not be dealt with at the hearing today and are dismissed with leave to reapply.

#### Issue(s) to be Decided

- Are the tenants entitled to have the 10 Day Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?

#### Background and Evidence

Both parties agree that this is a one year fixed term tenancy which started on August 01, 2011. Rent for this unit is \$1,200.00 per month and is due on the first of each month. The tenancy agreement has not been provided in evidence

The landlords' agent testifies that the tenants failed to pay all the rent from September, 2011 to January, 2012. The landlord testifies that Social Assistance paid a portion of the rent of \$570.00 for each of these months leaving a balance of \$630.00 for each month which the tenants failed to pay. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on January 25, 2011. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice states that the tenants owe rent of \$3,150.00. The tenants had five days to either pay the outstanding

rent, apply for Dispute Resolution or the tenancy would end on an undisclosed date. The tenants did not pay the outstanding rent but did dispute the Notice on February 01, 2011. Since that time the landlord testifies the tenants have failed to pay the balance of rent owed of \$630.00 for February, 2012. The landlord testifies that Social Assistance did pay the sum of \$570.00 towards the tenants rent for February, 2012 and the landlord testifies that she accepted this rent and did not inform the tenants that the rent had been accepted for use and occupancy only. The total amount of unpaid rent is now \$3,780.00.

The landlord has applied for a Monetary Order and an Order of Possession to take effect on April 30, 2012.

The tenants testify that when they moved into the rental unit there were a number of repair issues and they reached a verbal agreement with the landlord that the tenants would carry out the repairs and deduct the cost from their rent. The tenants' testify they did repairs to the bathroom and told the landlord their bill was \$2,400.00. The tenants testify that they told the landlord they would cut that figure in half and deduct \$600.00 from rent for September and \$600.00 from rent for October. The tenant testifies that the landlord went back on their agreement and refused to allow the tenants to deduct the rent and refused to pay the repair bill.

The landlord disputes the tenants claim and testifies that there are some repairs required at the rental unit however the rent for this unit was \$1,400.00 per month and the landlord reduced the rent for this tenancy to \$1,200.00 because of the repairs required. The landlord disputes that she had an agreement with the tenants for them to do work in lieu of rent.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the Act states:

*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.*

The tenants argue that they had a verbal agreement with the landlord to carry out repairs in lieu of rent, the landlord disputes this. By their nature, disputed verbal terms are not clear and are often impossible for a third party to interpret. I am not prepared to find a verbal agreement was in place as described by the tenants as the landlord has provided other documentary evidence in the form of scribed messages between the tenants and landlord concerning payment of rent and the tenants also failed to pay rent for the other following months.

Consequently, I find the tenants do owe rent to the landlord to the sum of \$3,780.00 and the landlord will receive a Monetary Order to recover this sum pursuant to s. 67 of the *Act*.

With regard to the landlord application for an Order of Possession; I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days. However, after the 10 Day Notice was served upon the tenants the landlord did accept a rent payment of \$570.00 from Social Assistance on behalf of the tenants and the landlord agrees she did not inform the tenants that the landlord was accepting this payment for use and occupancy only and by accepting it the landlord did not reinstate the tenancy.

Consequently, I find the landlord has accepted the rent payment and has in effect reinstated the tenancy.

As both parties have been partially successful at the hearing today I find each party must bear the cost of filing their own application.

### Conclusion

As the landlord has reinstated the tenancy the tenants' application to cancel the 10 Day Notice to End Tenancy is upheld and the Notice dated January 25, 2012 is cancelled and the tenancy will continue.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,830.00**. The order must be served on the tenants and is enforceable through the Provincial Court as an order of that Court.

The landlord application for an Order of Possession is dismissed.

The remainder of the tenants' application is dismissed with leave to reapply.

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 21, 2012.

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Residential Tenancy Branch