



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF  
CNR, MNDC, ERP, LRE, RR

### Introduction

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order suspending or setting conditions on the landlord's right to enter the rental unit; and for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

The landlord and both tenants attended the conference call hearing and each gave affirmed testimony. The landlord provided evidentiary material prior to the commencement of the hearing and the parties were given the opportunity to cross examine each other on the testimony and evidence, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

At the outset of the hearing, the landlord applied to amend the Landlord's Application for Dispute Resolution changing the spelling of one of the tenant's names. The tenants did not oppose that application, and an order was made allowing the amendment. The style of cause in this Decision reflects the amendment made.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Has the landlord established a claim as against the tenants for unpaid rent or utilities?

- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the monetary claim?
- Have the tenants established that a notice to end tenancy should be cancelled?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Have the tenants established that the landlord should be ordered to make emergency repairs for health or safety reasons?
- Have the tenants established that emergency repairs for health or safety reasons are warranted and should be ordered to be completed by the landlord?
- Have the tenants established that the tenant should be allowed to reduce rent for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

The parties agree that this month-to-month tenancy began on April 1, 2012 and the tenants still reside in the rental unit. The landlord testified that rent in the amount of \$650.00 per month was originally agreed by the parties, which was raised to \$1,600.00 per month, payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$325.00 which is still held in trust by the landlord.

The landlord further testified that the tenants rented one bedroom within a rental house for \$650.00 per month. The tenant's girlfriend moved in and the tenant agreed to pay \$800.00 commencing at the beginning of June, 2012. Another tenant was renting another bedroom for awhile and when that tenant moved out in July, the landlord has seen others in the house. The tenant told the landlord they were guests, and the landlord does not know when but believes they moved in sometime prior to July, 2012. The landlord then told the tenant that rent was increased to \$1,600.00 per month. The tenant paid the landlord \$800.00 in July, 2012 but has not paid any rent for August, September or October, 2012. The landlord claims \$5,600.00 for unpaid rent.

The landlord also testified that the tenants were served with a notice to end tenancy but did not provide a copy for this hearing. The landlord provided a copy of a letter addressed to the tenants from the landlord dated October 6, 2012 which states that the 10 Day Notice to Vacate the Premises expires on the day of the letter and states that all services to the property will be shut off. The landlord claims an Order of Possession.

The landlord's witness testified that the tenant was to pay \$650.00 per month for one bedroom, and once the tenant's girlfriend moved in, the tenant was supposed to pay

\$800.00 per month. The tenant had other people living in the rental unit who were paying the tenant rent for the other 2 bedrooms, but those tenants did not tell the witness how much they were paying.

The tenant testified that an advertisement was answered for this rental unit which stated that the rent would be \$600.00 per month for a 1 bedroom basement suite. The tenant viewed the rental unit and stated that it was not ready to be rented; there was no stove, no fridge and gyprock contained holes. The landlord told the tenant that the rental unit would be ready by the end of March. The tenant arrived with a moving truck to move in on April 1, 2012 and nothing had been done. There were still holes in the walls, no fridge or stove and the rental unit was unliveable. The landlord told the tenant that the tenant could move in upstairs until the basement suite was ready, so the tenant did. The basement suite was still not ready after 2 months. The tenant has a household full of furniture suitable for a 2 bedroom house, but the landlord moved in other tenants into the basement suite at the end of July, 2012.

In the meantime, the tenant's girlfriend moved in with the tenant on June 1, 2012. The tenant at that time agreed to pay \$800.00 per month which was paid since June 1, 2012.

A by-law enforcement officer attended the rental unit on August 30, 2012 and asked the tenant's girlfriend if she was the landlord, to which the girlfriend responded, "No," and then was told that the landlord was not supposed to rent the rental unit at all. Repairs were not completed according to law and the landlord only had a temporary permit and temporary construction pass and the power would be cut off. The tenant begged the City to keep on the power and they gave the tenants a pass until they could move. The landlord told the tenant that the landlord was already aware of it.

The tenant had arranged to move out on September 15, 2012 but the landlord phoned the new landlord who called the tenant and advised that the tenant's reference did not check out; the landlord in this rental unit told the new landlord that the tenant was running a brothel house. The tenant lost \$400.00 in moving expenses for which the tenant has no evidence, but the tenant is not asking for reimbursement. The tenant raised these issues to illustrate why the tenant is still residing in the rental unit.

The tenant also testified that the landlord had promised a washer and dryer in the rental unit but failed to supply the appliances so the tenant bought them and the landlord hooked them up.

On September 10, 2012 the toilet contents came up on the shower drain of the basement suite. The sewer was blocked and the tenants in the basement suite told the tenant that the landlord was already aware. The toilet then started to back up in the laundry room and spread all over the floor. The tenant was unable to flush the toilet, and it required City involvement to force the landlord to fix the sewer and clean up the sewage in the basement. The tenant testified that the City allowed the house to be occupied until the tenants move out. An emergency repair was completed by the City by digging sewage; the tenant stated that the system was not built within code.

The tenant further testified that on September 26, 2012 the landlord had entered the rental unit while the tenant was at work and changed the locks on 2 of the bedrooms. The landlord was moving the landlord's furniture into the rental unit, and upon arriving home, the tenant called the police. The landlord had taken all of the tenant's belongings and put them in a pile in the living room. The police told the landlord that doing so was not legal and the police watched the landlord put her furniture into a back room of the rental unit. Two days later, the landlord's friend came through the back door with a sledge hammer. The tenant ran out the front door and the girlfriend also ran. Police arrived and arrested the friend. A "no contact" order was made against the landlord.

Then, on September 23, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities stating that the tenant failed to pay rent in the amount of \$1,600.00. Another notice to end tenancy was served on the tenant with the Landlord's Application for Dispute Resolution in October, 2012 claiming \$8,800.00. None of the notices were provided for this hearing.

The tenant testified that the tenant's claim is for \$430.00 for a moving truck, but the tenant has not provided any evidence of that and stated that the tenants are not asking for any orders; just that the tenant s be left alone until they move. The tenants intend to move the day after this hearing, and the tenant testified that the tenant did not have any other tenants move into the rental unit.

### Analysis

In the circumstances, I am unable to determine the legality of a notice to end tenancy that is not before me. Further, the landlord testified that the tenant had agreed to pay \$800.00 per month for rent, but after the landlord learned that others may also be residing in the rental unit, the landlord unilaterally decided to increase the rent to double. That is not in accordance with the *Residential Tenancy Act* and I find that the landlord is not entitled to an Order of Possession for unpaid rent. I also find that the

landlord has failed to establish any monetary claim as against the tenants for unpaid rent. The landlord's application is hereby dismissed in its entirety.

The tenant testified that the tenants are moving from the rental unit, and are not pursuing the claim for the moving truck. Since the tenants are moving from the rental unit, I find that cancelling the notice to end tenancy is no longer requested by the tenants, and the tenants do not require an order that the landlord make emergency repairs for health or safety reasons, or that the landlord's right to enter the rental unit is restricted, or that the rent ought to be reduced for repairs or services promised but not provided. Therefore, the tenants' application is also dismissed.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

The tenants' application is also hereby dismissed without 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: November 02, 2012.

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Residential Tenancy Branch