



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord – OPR, MNR, FF

For the tenants – MT, CNR, MNR, MNDC, ERP, RP, PSF, LRE, LAT, RR

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord has applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for more time to cancel the Notice; to cancel the 10 Day Notice to End Tenancy, for a Monetary Order for the cost of emergency repairs; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to make emergency repairs for health or safety reasons; for an Order for the landlord to make repairs to the unit, site or property; for an Order for the landlord to provide services or facilities required by law; for an Order to suspend or set conditions on the landlords right to enter the rental unit; to authorize the tenant to change the locks to the rental unit; to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenants and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine 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, and the parties were permitted to provide additional evidence after the hearing had concluded. 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 more time to cancel a Notice to End Tenancy and to have a 10 Day Notice cancelled. As these issues are the main issues and the reminder of the tenants application is unrelated to these issues I decline to hear the reminder of the tenants application at the hearing today.

#### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Are the tenants entitled to more time to cancel a Notice to End Tenancy?
- If so are the tenants entitled to have the 10 Day Notice to End Tenancy cancelled?

#### Background and Evidence

Both parties agree that this tenancy started on January 01, 2010. Rent for this unit is \$950.00 per month and is due on the first day of each month. The tenants paid a security deposit of \$500.00 on or about January 01, 2010. The tenants testify that originally their tenancy was with the father of these landlords and they had a verbal agreement in place.

The landlord testifies that they have a Supreme Court Order that appoints them as Joint Committee of the estate of their father due to their father's mental infirmity. The landlord testifies that the tenant was sent two letters notifying the tenants that these landlords would be taking over their father's affairs with regard to the tenancy on July 09 and September 20, 2012. This information also included a copy of the Supreme Court

Order. Contained within these letters were details of the new landlord's bank accounts and the request that the tenant makes direct desposits on or before the first of each month.

The landlord testifies that the tenant failed to pay rent for November, 2012 and a 10 Day Notice was served upon the tenant by registered mail on November 03, 2012. This Notice informed the tenants that they owe rent for November of \$950.00 and they have five days to either, pay the rent, dispute the Notice, or vacate the rental unit on November 15, 2012. The landlord testifies that the tenants have not paid the rent for November or the subsequent months of December and January and they did not dispute the Notice within five days. The landlords seek an Order of Possession effective on January 31, 2013 and seek a Monetary Order to recover rent for November, December and January.

The tenant disputes the landlords claim. The tenant testifies that they have always paid their rent on time. The tenant agrees that they have continued to pay their rent to the landlord's father. The tenant testifies that \$450.00 of the rent is paid by direct deposit into the original landlord's bank and the remaining sum of \$500.00 has been paid by cash to the original landlord each month. The tenants have provided a written signed receipt given to them by the original landlord for November, December, 2012 and January, 2013 rent. The tenant has provided documentation from the Ministry of social Development showing that the sum of \$450.00 is paid directly to the original landlord for rent.

The tenant testifies that as they have never owed rent the landlord should not have issued them with a 10 Day Notice and the tenants seek to have the Notice cancelled.

The landlord disputes that the tenants have paid rent and state even if they have paid the rent to the original landlord they were notified on two occasions to make payments to the new landlords and failed to do so. The landlord has provided bank statements for their father's accounts and the business account. These bank statements show that the

sum of \$450.00 was deposited by the original landlord on July August, September and October, 2012.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a 10 Day Notice to End Tenancy is served upon a tenant this Notice is only valid if there is rent outstanding. The landlord have provided bank statements that show that the sum of \$450.00 was deposited by the original landlord on July August, September, and October but no further records show any other deposits. This however is not conclusive proof that the original landlord did not receive funds from The Ministry for the tenants as shown by the tenant's documentary evidence provided by the Ministry and is not conclusive evidence that the tenants did not pay cash to the original landlord as shown by the signed receipts

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Having considered the tenants verbal testimony and documentary evidence I find the tenants have shown that the Ministry paid the sum of \$450.00 to the original landlord for rent and the tenants paid cash of \$500.00 to the original landlord for rent as shown by the signed receipts. Therefore, I find that the tenants have met the burden of proof regarding the payment of rent. Although the tenants have paid rent to the landlords father, as the landlords have been appointed Joint Committee of the estate of their father the landlords should be able to access these funds from their father.

Consequently, it is my decision that at the time the Notice to End Tenancy was served upon the tenant there was no rent outstanding and therefore this renders the Notice to have no force or effect.

During the hearing it was argued that the tenants did not apply to cancel the Notice within the allowable five days. However as the Notice has no effect this five day rule is no longer a requirement.

I do however caution the tenants to ensure they pay rent to the correct landlords, as shown on the landlords' application, from February 01, 2013. The tenants must inform the Ministry of Social Development that their landlord has changed to ensure the funds received by the Ministry are paid into these landlords account.

### Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

The tenants' application to cancel the Notice to End Tenancy is upheld and the Notice dated November 03, 2012 is cancelled.

The reminder 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: January 08, 2013.

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Residential Tenancy Branch

