



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPR, MNR, MNSD

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to retain the security deposit - Section 38.

The Landlord and Tenants were given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the Notice to End tenancy valid?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on October 1, 2012.

The Landlord states that rent of \$1,550.00 is payable in advance on the first day of each month and that at the outset of the tenancy the Landlord collected a security deposit of \$750.00. The Landlord provided a copy of a signed tenancy agreement.

The Tenants state that the tenancy agreement provided as evidence by the Landlord is not the tenancy agreement that the Tenants signed. One of the Tenants states that she helped to write out the terms of the tenancy agreement and that these terms are

missing in the Landlord's copy. The Tenants state that the Landlord did not provide them with a copy of the tenancy agreement after they signed it on September 26, 2012. The Tenants state that the copy provided by the Landlord for this Hearing retains the first page and the signature page of the tenancy agreement that they signed but sets out different terms for the rent and length of tenancy. The Tenants states that they signed a fixed term tenancy for a year and that the tenancy agreement provided that the Tenants who appeared at this hearing would pay rent of \$750.00 for the upper unit and that the Tenant who did not appear at this hearing would pay rent of \$750.00 for the lower unit. The Tenants state that they do not have access to the lower unit and that the connecting door is secured by two locks. The Tenants state that the lower unit tenant moved out at the end of October 2012 but that the Tenants continued to pay their share of the rent.

The Landlord states that he told the Tenants that he would not separately rent out the units but that the Tenants insisted on the rental terms. The Landlord states that he originally rented the house out to only one person. The Landlord denies that he agreed to rent the units separately, states that he was not allowed to legally do so and that only a month to month tenancy was agreed to by the Landlord. The Landlord states that the Tenants were provided a copy of the tenancy agreement the day after they signed it. The Landlord states that it was dropped off in the Tenants' mailbox and that this was witnessed by his aunt. It is noted that this person appeared as a Witness but could not speak English so was unable to provide evidence. The Landlord states that the upper and lower units are not secured from each other.

### Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. Section 13 of the Act provides that a landlord must provide the tenant with a copy of the tenancy agreement within 21 days of the parties entering into an agreement. Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an

Application for Dispute Resolution with the Residential Tenancy Branch. Given the evidence of the Tenants of having signed a tenancy agreement with rent terms different than those contained in the tenancy agreement provided by the Landlord and considering that the Landlord did not directly deny that a different copy of the tenancy agreement was provided for this Hearing, I find that the Landlord has failed on a balance of probabilities to establish that the Tenants were required to pay more rent than was paid, that the Tenants failed to pay any portion of rent when the Notice was issued or that the Tenants failed to pay rent owed within the 5 days provided under the Notice. As a result I find that the Notice is not valid and I dismiss the Landlord's application.

#### Conclusion

The Landlord's application is dismissed.

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 06, 2013

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Residential Tenancy Branch

