



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURY 21 PERFORMANCE REALTY & MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF  
CNR

### Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by requesting a monetary order to recover unpaid rent up to the end of March 2013.

Based on the aforementioned I find the Landlord's intention of seeking to recover the payment for unpaid rent is actually payment for unpaid rent plus use and occupancy or loss of rent, for a period after the tenancy ended in accordance with the 10 Day Notice. Therefore, not checking off the appropriate box on the application was simply an oversight and/or clerical error. I find that the Tenant was informed of the Landlord's intention based on the breakdown of funds owed submitted with the application. Therefore, I amend the application, pursuant to section 64(3)(c) of the Act, to include a request for money owed or compensation for damage or loss under the act regulation or tenancy agreement.

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenant.

The Landlord filed on March 8, 2013, seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the act regulation or tenancy agreement; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on February 22, 2013, seeking an Order to cancel the 10 Day Notice for unpaid rent.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Should the 10 Day Notice issued February 15, 2013, be cancelled or upheld?
2. If upheld, should the Landlord be granted an Order of Possession?
3. Should the Landlord be issued a Monetary Order?

#### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a previous tenancy agreement; a notice of rent increase; three 10 Day Notices issued between October 5, 2012 and February 15, 2013; e-mails between the Landlord and the co-tenant.

The Tenant submitted documentary evidence which included, among other things, copies of: the current tenancy agreement; intent to rent form; and e-mails between her co-tenant and the Landlord.

The parties confirmed the Tenant has occupied the rental unit since February 2011 under different tenancy agreements and she has never vacated the unit. The most recent tenancy began on December 1, 2012, with the co-tenant L.L., for the monthly rent of \$761.39. The Tenants paid \$375.00 as the security deposit in February 2011.

The Tenant stated that her co-tenant roommate moved out of the rental unit and told her she would pay for all of January 2013 rent. She later found out that the co-tenant attended the Landlord's office but did not pay the rent as previously agreed. The Tenant confirmed that there is outstanding rent however she argued that the Landlord missed listing a \$375.00 payment on their submission therefore she only owes \$784.17 and not

\$1,159.17 as claimed. She did not submit documentary evidence to support this missing payment, nor does she know the date the payment was allegedly cashed.

The Landlord confirmed that after the rent remained in arrears they issued another 10 Day Notice on February 15, 2013 and posted it to the Tenant's door. Based on their records the Tenant owes \$1,159.17 in unpaid rent accumulated from December 2012 up to the end of March 2013. They are seeking an Order of Possession effective April 1, 2013 and the monetary order.

### Analysis

The *Residential Tenancy Policy Guideline # 13* defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. Co-tenants have equal rights under the tenancy and are jointly and severally responsible for any debts or damages relating to the tenancy. That means the landlord can recover the full amount owed from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the co-tenant vacated the property and the Tenant continues to occupy the unit without paying the full amount of rent payable. The Tenant received the Notice February 16, 2013 and filed an application on February 19, 2013 to dispute the Notice. Upon review of the evidence I find the Notice to be valid and the Tenant to be in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement. Accordingly, I dismiss the Tenant's application.

The effective date of the Notice is **February 26, 2013**; ten days after the Tenant received the Notice, in accordance with section 90 of the Act. The Tenant did not pay the rent in full, therefore I find this tenancy ends on the effective date of the Notice and the Tenant must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession effective April 1, 2013.

The Landlord claimed unpaid rent and use and occupancy of \$1,159.17 up to March 31, 2013. In the absence of documentary evidence to prove otherwise, I find the Landlord has met the burden of proof and I award the Landlord a Monetary Award for **\$1,159.17**.

The Landlord has been successful with their application; therefore, I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

|  |                         |
|--|-------------------------|
| Unpaid Rent & use & occupancy                          | \$1,159.17              |
| Filing Fee   | <u>50.00</u>            |
| <b>SUBTOTAL</b>  | \$1,209.17              |
| <b>LESS:</b> Security Deposit \$375.00 + Interest 0.00 | <u>-375.00</u>          |
| <b>Offset amount due to the Landlord</b>               | <b><u>\$ 834.17</u></b> |

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **April 1, 2013 at 1:00 p.m. upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$834.17**. This Order is legally binding and must be served upon the Tenant.

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: March 21, 2013

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Residential Tenancy Branch

