



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP MEDALLION REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, CNR, MT, MNDC, RP, LRE, RR, FF

### Introduction

This hearing dealt with cross applications. The landlord applied for an Order of Possession and a Monetary Order for unpaid rent. The tenants applied to cancel a Notice to End Tenancy for Unpaid Rent and more time to make the application. The tenants also applied for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; Orders for repairs and for the landlord's right to enter the unit suspended; and, authorization to reduce rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary Issue

It was undisputed the a 10 Day Notice to End Tenancy for Unpaid Rent was personally served upon the female tenant on July 8, 2013 with a stated effective date of July 18, 2013 and the tenants have not paid the rent indicated on the 10 Day Notice. The tenants filed their Application for Dispute Resolution to dispute the 10 Day Notice on July 24, 2013.

The Act provides that a tenant may file to dispute a 10 Day notice within five days of receiving the Notice. Section 63 of the Act provides that an extension of time may be granted in exceptional circumstances; however, the time limit to make an application to dispute a notice to end a tenancy must not be extended beyond the effective date of the Notice.

In this case, the tenants have filed to dispute a 10 Day Notice after the effective date of the Notice. Pursuant to section 63 I may not extend the time limit to permit the tenants to dispute the 10 Day Notice beyond the effective date of the Notice. Therefore, I cannot accept the tenants' request to cancel the 10 Day Notice and the 10 Day Notice is considered to be undisputed.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession and Monetary Order for unpaid rent?
2. Have the tenants established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Are the tenants entitled to a rent reduction?
4. Is it necessary to issue orders for repairs or to set conditions on the landlord's right to enter the unit?

Background and Evidence

The tenancy commenced January 1, 2013 and the tenants are required to pay rent of \$1,350.00 on the 1<sup>st</sup> day of every month. On July 8, 2013 the landlord personally served the female tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) with a stated effective date of July 18, 2013. The Notice indicates that \$675.00 in rent was outstanding for the month of July 2013. The tenants did not pay the amount of rent indicated on the Notice and did not file an Application for Dispute Resolution to dispute the Notice within the time limit required by the Act.

The tenants had been paying rent by way of automatic debit prior to July 2013. In June 2013 a flood in the basement and subsequent remediation work commenced. The tenant informed the landlord that he was putting a stop payment on his rent payment for the month of July 2013. The landlord considered the tenant to have rescinded his authorization to make automatic debits from his bank account and the landlord did not attempt to withdraw the funds.

The tenant communicated to the landlord that he wanted to be compensated the equivalent of July's rent because of the flooding and loss of use of the basement. The landlord responded by authorizing a rent reduction of 50% of the monthly rent or \$675.00, to be deducted from the rent owed for July 2013. The landlord requested the tenant's authorization to withdraw \$675.00 from his bank account by July 5, 2013. The tenant did not provide such authorization and on July 8, 2013 the 10 Day Notice was issued indicating rent of \$675.00 was outstanding.

In filing the Landlord's Application for Dispute Resolution the landlord requested a Monetary Order for unpaid rent in the amount of \$675.00. It was undisputed that the tenants have not paid any rent for the month of August 2013 either; however, the landlord did not clearly communicate a request to amend the Application for Dispute

Resolution to include loss of rent for August 2013. Accordingly, this decision deals with the landlord's claim for unpaid rent for July 2013 only.

The tenant indicated that he is actively seeking new accommodation and intends to move in the near future. The tenant indicated that he and his family do not wish to be disturbed by the restoration crew before vacating. Therefore, I did hear further submissions with respect to orders for repairs.

As I heard the tenant has effectively denied access to the rental unit to the restoration crew and the landlord has not attempted to enter since then I found it unnecessary to further consider the tenants' request for conditions to be set upon the landlord's right to enter the rental unit.

The remainder of the hearing dealt with the tenants' request for compensation for the flooding and loss of use of the basement. The tenant clarified that the tenants are seeking the equivalent of one month's rent for loss of use and \$380.00 for cleaning costs.

In support of the tenants' claims for compensation the tenant submitted the following:

- Water and dirt backed up from a floor drain in the basement five times since the tenancy began.
- On two occasions the tenants cleaned up the mess and on three occasions they hired someone to clean up the mess. The tenant paid the person hired to clean \$380.00 in cash.
- The tenant was unable to provide specific dates as to the five back-ups.
- In June 2013 the last flood occurred and major repairs and restoration work commenced, leaving the basement area uninhabitable and the front yard dug up.
- Since the basement area was no longer inhabitable, the tenants' sons had to sleep on the floor of the upper level instead of their bedrooms located in the basement.
- The tenant had provided a key to the restoration crew so as to facilitate the restoration work; however, a couple of weeks ago the tenant took the key back as he was unsatisfied with the crew's appearance, use of profanity, and the times of the day they were at the property.
- A receipt was given to the owner for \$380.00 in cleaning costs to include in the insurance claim.

The landlord provided the following responses:

- Three incidents of flooding from the floor drain were reported by the tenants:
  - January 14, 2013;
  - February 7, 2013; and,
  - June 17, 2013.
- In January 2013 and February 2013 plumbers were sent to the property and the floor drain was snaked. This appeared to address the problem as there were no further complaints until June 17, 2013.
- When the landlord attended the property to inspect the reports of flooding the landlord did not observe any debris or mess on the floor and was of the understanding the female tenant had cleaned it up. Nevertheless, professional carpet cleaners were brought in after the February 2013 back-up.
- After the third incident in June 2013 the landlord and owner determined it was necessary to perform more extensive repairs and remediate the basement. Inspection by the insurance company and contractors ensued.
- Remediation work commenced July 3, 2013 and the tenant provided the restoration crew with a key to the house. The tenant took the key away from the restoration crew July 19, 2013.
- On July 22, 2013 the tenant communicated to the landlord that he does not want anyone in the house until the rent/eviction issue is dealt with. The landlord has respected the tenants' wishes and has not issued Notices of Entry.
- In light of the above, the restoration and insurance claim remain outstanding.
- The landlord was unaware that the tenants hired someone to clean up a mess from the back-ups until the tenant informed her of such in June 2013. While the landlord is uncertain as to the dates this person was hired, the tenants submitted a receipt to the landlord and the landlord has forwarded that receipt for the owner's insurance claim. The landlord was agreeable to forwarding the tenants any compensation the owner's insurance company pays with respect to this receipt.

The landlord acknowledged that the tenants have suffered a loss of use of the house but was of the position that the \$675.00 credit already given to the tenants is sufficient considering:

1. The tenants have restricted entry to the restoration crew and the restoration work would have been completed by July 27, 2013.
2. The tenants were required to have tenant's insurance under the terms of tenancy and did not acquire any. Tenant's insurance would have likely covered the cost

of alternative accommodation while the repairs and/or restoration work was underway.

3. The area affected by the restoration work is slightly less than 50% of the total area of the house.

### Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold the rent. The Act provides very limited and specific circumstances when a tenant may legally withhold rent.

Where a tenant suffers a loss of use of the rental unit or is in need of repairs, such as in this case, the tenant's options are to request a rent reduction from the landlord and if the tenant does not receive a satisfactory result from the landlord the tenant may file an Application for Dispute Resolution seeking authorization for a rent reduction or compensation from an Arbitrator. Unless the tenant has the landlord's agreement or the authorization of an Arbitrator the tenant does not have the legal right to withhold rent.

In this case, the landlord had authorized a rent reduction of \$675.00. While this was not satisfactory to the tenants the tenants did not file an Application for Dispute Resolution for a rent reduction or compensation from an Arbitrator before deciding to withhold all of the rent owed for July 2013. Therefore, I find the landlord was entitled under the Act to serve a 10 Day Notice.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

The tenants did not pay the amount of rent indicated on the 10 Day Notice and did not file to dispute the Notice within five days of receiving it. As explained in the Preliminary Issue section of this decision, the tenants' request to cancel the 10 Day Notice was filed much too late and the Notice, is therefore, considered undisputed.

In light of the above, I find the tenancy has ended and the landlord is entitled to an Order of Possession as requested. I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

With respect to the parties' respective monetary claims it is important to note that the party making the claim bears the burden to prove their claim. As such, the landlord bears the burden to prove an entitlement to receive rent from the tenants and the tenants bear the burden to prove an entitlement to receive compensation from the landlord on the basis of negligence or loss of use.

Based upon everything presented to me, I provide the following findings and reasons with respect to each monetary claim.

I find the landlord has established an entitlement to collect rent from the tenants for the month of July 2013 upon review of the tenancy agreement and undisputed evidence that the tenants rescinded consent for the landlord to withdraw the rent from the tenants' bank account.

I find the tenants failed to provide sufficient particulars or evidence to demonstrate that there were a total of five water back-ups in the basement since their tenancy began as opposed to the three specific dates documented by the landlord.

Based upon the evidence before me, including the plumber's invoices, the carpet cleaning invoice, and the landlord's chronology of events, I accept that upon notification of a water back-up the landlord acted swiftly and reasonably in the circumstances. Therefore, I find there is insufficient evidence of negligence on part of the landlord.

It is undeniable that the tenants suffered a significant loss of use of the rental unit when major repairs and restoration work commenced after a third back-up in mid-June 2013. The landlord does not dispute that the tenants are entitled to compensation for their loss. Rather, the nature of the dispute concerns the amount of compensation the tenants are entitled to receive from the landlord.

I accept the landlord's undisputed evidence that the restoration work commenced July 3, 2013 and was set for completion for the end of July 2013 had the tenant not refused entry by the restoration crew starting July 19, 2013. I find insufficient evidence that prior to commencement of the restoration work the tenant's suffered a significant loss of use the basement. Temporary inconvenience or loss of use is not a basis for awarding compensation. Therefore, I consider the tenants entitlement to compensation commenced when the remediation did: on July 3, 2013.

I accept that nearly one-half of the total living area has been affected by the restoration work. While the remaining part of the house is much less useable because all members

of the family must use the one level of the house, I find it appropriate to consider the tenants did not seek out alternative accommodation or storage space because they did not carry tenant's insurance as they were required to carry.

Considering all of these factors, I find the landlord's offer to compensate the tenants 50% of the rent owed for the month of July 2013 to be reasonable and sufficient in the circumstances. Therefore, the tenants are awarded compensation of \$675.00 and I deny the tenants' request for further compensation.

In light of the above, the landlord is provided an award for unpaid rent in the net amount of \$675.00 after the tenants' compensation has been deducted from the monthly rent payable.

I make no award for cleaning costs to the tenants as the tenants did not provide me with a copy of the receipt. However, considering a receipt was submitted as part of the owner's insurance claim, I find it appropriate to ORDER the landlord to forward any proceeds the insurance company pays toward the cleaning receipt submitted by the tenants.

The remainder of the issues identified by the tenants on their Application for Dispute Resolution have been dismissed as the tenancy has ended.

Considering the success of each party with their respective Application, I award the landlord the filing fee paid for the landlord's application and I deny the tenants' request to recover the filing fee they paid.

In summary, the landlord has been provided a Monetary Order in the total amount of \$725.00 (\$675.00 rent for July 2013+ 50.00 filing fee) to serve upon the tenants. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as necessary.

### Conclusion

The tenancy has ended for unpaid rent and the landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been provided a Monetary Order in the amount of \$725.00 to serve and enforce as necessary. Compensation payable to the tenants has been reflected in the Monetary Order issued to the landlord with this decision and the remainder of the tenants' application has been 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: August 08, 2013

---

Residential Tenancy Branch



