



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      OPR, MNR

### Introduction

This Review Hearing was conducted as a result of the Tenants' Application for Review Consideration.

Both parties appeared at the hearing and the Landlord was assisted by an Agent and had a Witness attend. The hearing process was explained and the participants were asked if they had any questions. All participants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Matters

This dispute began after the Landlord filed an Application for Dispute Resolution on June 25, 2013, through the Direct Request process. The Landlord was granted an order of possession and a monetary order for unpaid rent through this process on July 4, 2013.

The Tenants applied for a Review of the Decision granting the order of possession and the monetary order for unpaid rent. The Tenants claimed the Landlord told the Tenants to draw up a letter with certain terms and conditions in it to resolve the issues, one of which was apparently a change to the date that rent was to be paid under the tenancy agreement, and terms about payment of outstanding rent and hydro. According to the Tenant, the Landlord said they would then waive the 10 day Notice to End Tenancy.

The Tenants claimed the Landlord then refused to sign the letter and refused to take the rent money. A Review Hearing was granted since the Reviewing Arbitrator found that *if* there been a waiver of the Notice to End Tenancy by the Landlord, this may have had a material effect on the Arbitrator's position and the original decision may have been different.

Following the granting of this Review Hearing, the Landlord attempted to amend the original Application for Dispute Resolution to increase the monetary amount sought for additional rents that were not paid by the Tenants for July and August. I do not allow this Amendment to occur under section 64 of the Act, as I find it is not in keeping with the principles of administrative justice to amend an Application when it is subject to a Review Hearing, which is a form of appeal. In other words, I do not find you can amend an Application that is under Review in these circumstances.

As the Decision granting this hearing allowed the parties to submit evidence, I do allow in evidence the copies of the rent cheques for July and August of 2013, as submitted by the Landlord, which were not honoured by the Tenants' bank.

#### Issue(s) to be Decided

Should the original decision and orders be confirmed, varied or set aside?

#### Background and Evidence

The Landlord testified they served the Tenants with a 10 day Notice to End Tenancy for unpaid rent on June 14, 2013, by posting it to the door. The Landlord testified that the Tenants contacted her by phone and told her they would pay the rent by June 26, 2013. The Agent for the Landlord testified that the Landlord was concerned about going back and forth to the rental unit as the Tenants had been late paying rent before, and the Landlord had gone to the rental unit to collect rents several times before only to learn the Tenants did not have the rent they promised to pay.

The Tenant testified she did not get the 10 day Notice to End Tenancy posted on the door until June 17, 2013. The Tenant testified that when she phoned the Landlord to talk about the outstanding rent the Landlord told her to write out an agreement they made on paper and the Landlord would sign it and collect the rent on June 26, 2013.

The Landlord filed the Application for the Direct Request process on June 25, 2013.

The Landlord testified they went to the rental unit on June 26, 2013 and the Tenant refused to pay the rent unless they signed the papers the Tenants had prepared. The Landlord testified she served her with the Notice of Proceeding by Direct Request and their Application at this time.

The Tenant testified the Landlord refused to sign the papers and refused to take the rent money which was in cash.

The Landlord testified that she did not refuse to accept the rent. The Landlord denied she had told the Tenant she would waive the 10 day Notice to End Tenancy.

The Landlord's Witness testified he was at the door with the Landlord and the Tenant on June 26, 2013, and that he did not see cash rent money. He did see that the Landlord refused to sign the papers offered by the Tenants.

The Landlord testified that she would not sign the papers as she did not agree to allow the Tenants to change the date the rent was due from the first day of the month to the 10<sup>th</sup> day of the month. The Landlord testified that the Tenant did not pay her the rent money on June 26, 2013.

The Tenant insisted she offered the rent money to the Landlord although she claims the Landlord refused to take it. The Tenant testified they had really wanted to change the date rent was due to the 10<sup>th</sup> day of the month, as they felt this would help pay their rent on time.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find I must dismiss the Review of the Tenants, for the reasons explained below.

I do not find that the parties came to an agreement on changing the terms of the tenancy agreement in any form and in particular, to have rent paid on the 10<sup>th</sup> day of the month rather than the first day.

In order to have an agreement both parties must agree. I find there is no evidence that the Landlord agreed to change the date rent was due.

I do not find the refusal to sign this agreement by the Landlord was a waiver of the 10 Notice to End Tenancy, or a breach of any agreement with the Tenants, or allowed the Tenants to not pay rent.

In any event, the Tenants are not allowed to withhold rent when it is due pursuant to section 26 of the Act.

Under section 26 of the Act, the Tenants must pay rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants had an order allowing them to not pay rent or allowing them to reduce the rent payable. The Tenants had no such order.

I also find the Tenant's testimony lacked credibility regarding the Landlord refusing to take cash money for rent owed. Although the parties clearly disagree on whether or not there was an agreement on changing the due date for rent and other issues, the Landlord and the Tenants' evidence is consistent with them agreeing that on June 26, 2013, the Landlord would come to the rental unit and would be paid the outstanding rent owed by the Tenants. On a balance of probabilities, I find it unlikely that having gone to the rental unit to collect rent money the Landlord would then refuse to accept cash for the rent that was due, unless something else occurred at the time. Although I am unable to make binding findings on the actual events that occurred on June 26, it would seem more likely that the Tenant refused to give the rent money to the Landlord because the Landlord refused to sign the papers offered by the Tenant.

Regardless of why the Tenants did not pay the rents, they had no right to do so under section 26 of the Act. I also accept the evidence of the Landlord that the Tenants have not paid rent for July or August either; however, the Landlord will have to file a new Application to claim for these rents.

### Conclusion

For the above reasons, **I dismiss the Review of the Tenants and I confirm the decision, order of possession and monetary order granted on July 4, 2013, and these remain in full force and effect.**

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 29, 2013

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Residential Tenancy Branch

