



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, MNDC, ERP, RP, AS, RR, OPR, FF

### Introduction

In the first application, by file number, the tenants seek to cancel a Notice to End Tenancy for cause. They also seek an order that the landlord attend to repairs of the premises, that they have a rent reduction and be allowed to change the locks. It should be noted that there is no evidence of a one month Notice to End Tenancy.

In the second application the landlord seeks an order of possession pursuant to a ten day Notice to End Tenancy, apparently attached to the tenant Mr. L.'s door on December 2, 2013 with Mr. L. standing there, and a monetary award for \$1200.00 of rent and for unspecified money owed or compensation for some unstated loss.

During the hearing it became apparent that the tenants had made an application to cancel that ten day Notice to End Tenancy. That application was made on December 23, 2013 and was also scheduled to be heard by me today. According to the tenant Mr. L. he served the application on the landlord by putting a copy under a windshield wiper on the landlord's car on December 26<sup>th</sup>. The landlord denies receiving it.

### Issue(s) to be Decided

Based on the relevant evidence presented at hearing, what, if any of the claimed relief are the parties entitled to?

### Background and Evidence

The rental unit is a three bedroom house. The tenant Mr. J. rented a room in the house on October 1, 2013. He appears to be the first of the three tenants to have arrived. It appears he had an agreement with the landlord to pay \$400.00 per month. There are no written tenancy agreements with any of the three tenants.

A few days later, the tenant Mr. McG. arrived. Mr. J. claims that he landlord just showed up with him and inserted him into the house. Mr. McG. indicates he knew Mr. J. from before and came into the house as a tenant at Mr. J.'s request.

According to Mr. McG., at the end of October the landlord inserted Mr. L. into the house. Mr. McG. takes issue with the assertion that Mr. L. is a proper tenant.

The landlord does not disagree with the timing of the arrivals of the three tenants. He says, as his witness Mr. M.J. affirms, the tenants have laughed at them and said they were not going to pay the December rent.

Each of the tenants claim to have paid their \$400.00 December rent. Mr. McG. produced a photocopy of what he says is a receipt for December rent. The landlord says he has not seen that evidence but that it must be a forgery because he didn't receive the rent from any of them.

Mr. J. and, to a lesser extent, Mr. McG. testified about the state of the premises, claiming there were asbestos floors, the basement was filling with water the water heater was immersed in water. No physical evidence was presented to corroborate the allegations. The tenants say they could not get information about how to submit things like photographs. There is no evidence that have called the health or safety inspectors to view the premises. The landlord says that home is in good condition.

### Analysis

Regarding the tenants' initial application, the burden is on them to show, on a balance of evidence that the premises require repair and that, for some reason, the landlord should be prohibited from his normal, limited, right of access to the premises. On the evidence before me the tenants have not approached satisfying that burden and I dismiss their first application, file # 251168.

I dismiss the tenants' second application, file# 251192, as well. They have proved service of that application on the landlord in accordance with s. 88 of the *Residential Tenancy Act* and, in any event, the application was made beyond the five day limitation period that started to run on December 2, the date of service. That limitation period cannot be extended past the effective date of the ten day Notice to End Tenancy (s.66(3) of the *Act*) and that effective date would have been December 12, 2013.

I find I must also dismiss the landlord's application for a monetary award for unpaid rent and for an order of possession.

The landlord has put himself at disadvantage by failing in his statutory obligation to prepare and have his tenants sign a written tenancy agreement. "Intent to Rent" forms prepared for the welfare office and signed by a landlord are not tenancy agreements.

The landlord claims a monetary order of \$1200.00 against each of the three respondents. However, there is not one tenancy here with three tenants. There are three separate tenancies, one with each tenant. The landlord argues that the tenants are together as joint tenants but that cannot be. Each joint tenant must claim his right to the premises under the same act or document (Megarry and Wade, *The Law of Real Property* (3d) 407) and here there was no such single act nor is there any document that ties the tenants together as tenants under a single tenancy.

So, the landlord cannot claim \$1200.00 monthly rent from any of the tenants. He can only claim the \$400.00 per month each tenant owes and must pursue each for that rent.

In the same vein, the landlord cannot claim that the tenancy has ended as the result of the ten day Notice served December 2<sup>nd</sup>. That Notice was against all three tenants, whereas the landlord was obliged to serve a Notice to the tenant under each tenancy for unpaid rent due under that tenancy. Even though I have found that the tenants failed to dispute that Notice in a timely manner, and even though s. 46 of the *Act* provides that a tenant who fails to pay or dispute such a Notice "is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice," the Notice in question cannot support an order of possession because it refers to a single tenancy between the landlord and these three tenants, and such a single tenancy does not exist.

### Conclusion

All three applications before me are dismissed. I award no filing fee.

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: December 31, 2013

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Residential Tenancy Branch

