



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, OPB, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession based on a mutual agreement to end tenancy;
2. For an order of possession based on unpaid rent;
3. For a monetary order for unpaid rent;
4. To keep all or part of the security deposit; and
5. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a notice to end tenancy for unpaid rent.

Both parties appeared, gave 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 at the hearing.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Should the notice to end tenancy be cancelled?

### Background and Evidence

The parties entered into a tenancy agreement which began May 2012. Rent in the amount of \$750.00 was payable of the first day of each month. The tenants paid a security deposit of \$375.00.

The parties agreed on August 20, 2013, that they entered into a written agreement to mutually end the tenancy, with an effective vacancy date of October 31, 2013. The parties agreed that there was no mutual agreement by the parties to cancel the agreement to end tenancy that was made on August 20, 2013.

The landlord stated that the tenants failed to vacate the rental unit on the effective vacancy date in the mutual agreement and they are overholding the premises. The landlord stated he issued a 10 Day Notice to End tenancy for unpaid rent on November 6, 2013, as the tenants had not paid any occupancy rent. The landlord stated there was no agreement or implied agreement that he was reinstating the tenancy. The landlord stated he seeks an order of possession based on the notice to end tenancy by mutual agreement.

The landlord stated that he seeks to recover rent for November and December 2013.

The tenants stated that they entered into the mutual agreement to end tenancy; however, they were unable to find new rental accommodations. The tenants stated that they and their advocated tried to contact the landlord to pay the rent, however, that was unsuccessful.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under section 44 of the Act, a tenancy ends if the landlord and tenant agree in writing to end the tenancy.

The parties agreed to end the tenancy on October 31, 2013, in writing. The tenants did not vacate the rental unit as they were unable to find housing. However, a party cannot unilaterally withdraw an agreement to end the tenancy. As a result, I find the tenancy ended on October 31, 2013.

In this case, the landlord issued a 10 Day Notice to End Tenancy for unpaid rent on November 6, 2013, after the effective vacancy date as the tenants were in possession of the rental unit.

When a tenant remains in possession of a rental premises the tenant is liable to pay occupancy rent on a per diem basis until the landlord recovers possess of the premises.

I find there is no evidence to support that the landlord was agreeing to cancel the mutual agreement to end tenancy.

As result, I find that the landlord is entitled to an order of possession based on the mutual agreement to end tenancy, effective **two days** after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court.

I further find that the landlord is entitled to recover occupancy rent for the full month of November 2013, in the amount of \$750.00, and half the rent for December 2013, in the amount of \$375.00. Therefore, I find the landlord has established a total monetary claim of **\$1,225.00**, for occupancy rent and the cost of the filing fees.

Should the tenants continue to overhold the rental unit the landlord is at liberty to apply for further loss of rent as permitted under the Act.

### Conclusion

The tenants' application is dismissed.

The landlord is granted on order of possession. The landlord is granted a monetary order for unpaid rent.

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 16, 2013

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Residential Tenancy Branch

