



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes** *OPR, MNR, CNR, DRI, FF.*

## **Introduction**

This hearing dealt with cross applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- To dispute an additional rent increase;
- To cancel the Ten Day Notice to End Tenancy for Unpaid Rent;
- A monetary order for compensation for overcharged rent,
- The filing fee, pursuant to Section 72.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

## **Issues to be decided: Landlord's Application**

- Is the landlord entitled to an order of possession and a monetary order for unpaid rent based on the Ten Day Notice to End Tenancy for Unpaid Rent ?

## **Issues to be decided: Tenant's Application**

- Is the tenant entitled to an Order to cancel the Notice to End Tenancy for Unpaid Rent and to monetary compensation for overcharged rent?

### **Background and Evidence**

Based on the testimony of both parties, the background is as follows. The tenants rented the upper half of the duplex for \$700.00 per month from a couple who had rented the entire building from the owner/landlords. This couple occupied the lower unit, while the tenants lived in the upper portion of the building. The utilities were shared.

The couple living in the lower suite, who functioned as the tenant's landlord, vacated the unit in November 2013, and transferred the tenant's security deposit to the owner to hold in trust for the tenants. The tenants occupying the upper suite were then granted a one-month lease directly from the owner/landlord to continue to rent their suite at \$1,000.00 per month for a fixed term of one month. The contract stated that the tenancy would then revert to a month-to-month tenancy.

According to the tenants, during November 2013, they were then pressured by the landlord to sign a totally new agreement to rent the entire building, including both upper and lower suites for \$1,400.00 per month. The tenant testified that they did not want this new tenancy where they would be responsible to rent both suites and find a tenant for the lower suite. The tenant testified that they merely wanted to continue with the same agreement that they had with their original landlords, the couple that rented them their upper suite for \$700.00 per month.

However, the tenants did sign the new agreement committing to rent both suites despite their preference to only rent their own suite. The tenants stated that they did this under threat of losing their tenancy altogether. The tenant pointed out that the landlord had no right to force this arrangement, particularly as they believe that the lower unit is not rentable due to mold infestation.

According to the landlord, the previous occupants who rented the entire duplex from them ended their tenancy, leaving their subtenants still occupying the upper suite. However, the owner/landlords permitted the remaining tenants to enter into a new one-month fixed term rental agreement for the month of November 2013 to continue to reside in the upper suite for \$1,000.00 per month. The landlord testified that their intention was to refurbish the lower suite and after that was completed, both the upper and lower portions of the duplex would again be rented to a single renter, who would then be at liberty to re-rent one of the two suites to subtenants.

The landlord testified that they believed that the existing tenants were willing to rent the entire duplex instead of relinquishing their tenancy altogether. Towards this end, a new

tenancy agreement was written up and signed by both parties for \$1,400.00 per month as of December 2013, for the tenant to rent both the upper and lower suites in the duplex.

The landlord denied that there was a dangerous mould issue in the lower suite. Although the landlord is now aware that the tenants would prefer only to rent and occupy the upper suite in the duplex, the landlord is not amenable to renting the two suites separately and feel that the tenant is bound by the tenancy agreement they signed to pay rent for the entire duplex including both suites.

The landlord testified that the tenant short-paid the rent for December 2013 and January, 2014 by only submitting \$700.00 for each of these month, instead of the \$1,400.00 set out in the tenancy agreement. The landlord seeks to end the tenancy pursuant to the Ten Day Notice to End Tenancy for Unpaid Rent dated December 13, 2013.

The tenant feels that they should rightfully be entitled to now remain in the suite under the same terms as their original agreement with the couple who was previously in charge of the duplex and should only be charged \$700.00 per month. The tenant's position is that the Ten Day Notice to End Tenancy for Unpaid Rent should be cancelled.

**Analysis:**

A mediated discussion ensued, the outcome of which was a mutual agreement to permanently terminate the tenancy effective February 1, 2014. The tenants agreed that they would pay rent to the landlord of \$1,400.00 for December 2013 and \$1,400.00 for January 2014, plus half the cost of utilities. As the tenants have already paid \$700.00 for December 2013 and \$700.00 for January 2014, I find that the outstanding amount still owed is \$1,400.00, minus the tenant's \$375.00 security deposit, held in trust by the landlord. The total debt still remaining to the end of January 2014 is therefore \$1,025.00.

Accordingly, based on the mutual agreement reached by the parties, I hereby issue an Order of Possession in favour of the landlord effective 1:00 p.m. on Saturday, February 1, 2014. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the landlord a monetary order in the amount of \$1,025.00 including retention of the tenant's \$375.00 security deposit. This order must be served on the tenant and may be enforced through Small Claims court, if not paid.

Each party is responsible for their own costs of the application.

**Conclusion**

The parties reached a mutual agreement to terminate the tenancy and compensate the landlord resulting in an Order of Possession and monetary order being granted to the landlord by consent.

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: January 13, 2014

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Residential Tenancy Branch

