



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR, MNR, FF  
CNR, MNDC, ERP, RP, RR

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for an order that the landlords make emergency repairs for health or safety reasons; for an order that the landlords make repairs to the unit, site or property; and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

Both landlords and both tenants attended the hearing and the parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other which included photographs of the rental unit. Both landlords and one of the tenants gave affirmed testimony and the parties were given the opportunity to cross examine each other on the evidence and testimony provided.

During the course of the hearing it was determined that the copies of the tenants' photographs provided to the landlords were much smaller. The tenant had copies made for the Residential Tenancy Branch, and so as not to incur a great expense, the landlords and the tenants had the benefit of seeing the "Proofs" which are several miniature photographs on a single page and several pages. The tenant relied on those miniature proofs for this hearing and testified that the tenants had exactly the same as the landlords' copy. I must weigh the importance of that evidence to the possible prejudice to the landlords because they do not have the benefit of the larger photographs that I am asked to consider. Also, I do not have the benefit of seeing how small the photographs are that have been provided to the landlords or if certain things are visible in those smaller proofs. The Residential Tenancy Branch Rules of

Procedure state that copies of any documents or photographs that the applicant intends to rely upon as evidence must be served on the respondent. The tenants rely on the photographs they have provided to me, not on the smaller copies provided to the landlords. Therefore, I find that the tenants have not complied with the Rules of Procedure, and I cannot consider the tenants' photographs.

All other evidence of the parties has been reviewed and is considered in this Decision.

#### Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Should the notice to end tenancy for unpaid rent be cancelled?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for loss of enjoyment of the rental unit?
- Have the tenants established that the landlords should be ordered to make emergency repairs for health or safety reasons?
- Have the tenants established that the landlords should be ordered to make repairs to the unit, site or property?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

#### Background and Evidence

##### Landlords' Testimony Respecting Notice to End Tenancy and Unpaid Rent

The first landlord testified that this month-to-month tenancy began on December 15, 2013 and the tenants still reside in the rental unit. Rent in the amount of \$1,150.00 per month is payable in advance on the 1<sup>st</sup> day of each month. A written tenancy agreement exists but a copy has not been provided for this hearing. The landlord also testified that the tenants were to pay a security deposit in the amount of \$575.00 and gave the landlords a cheque for it but asked the landlords to not cash it because the money in the account would not cover it. The landlords agreed to wait, and to date, no security deposit has been paid.

The landlord further testified that the tenants failed to pay rent when it was due for the month of February, 2014; the tenants paid \$900.00 on February 1, 2014 leaving a

balance of \$250.00 outstanding. The tenants paid \$1,000.00 on February 28, 2014 for March rent leaving an additional \$150.00 outstanding and told the landlords the outstanding amounts would be paid on March 7, 2014. The landlord called the tenants on March 7, 2014 and the tenant advised that they had no money.

The landlords issued to the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and have provided a copy for this hearing. The notice is dated March 7, 2014 with an effective date of vacancy of March 17, 2014. The notice states that the tenants failed to pay rent in the amount of \$400.00 that was due on March 1, 2014. The landlord testified that the notice was personally handed to the male tenant on March 7, 2014.

#### Tenants' Testimony Respecting Notice to End Tenancy and Unpaid Rent

The tenant testified that on March 4, 2014 the tenant drove to the landlord's residence to pay the outstanding rent, but the landlord stated that they would rather lose the money and have the tenants move out. The landlord refused the money. The landlords also refused April rent when the tenants attempted to pay it in mid-to late March. The tenant does not deny that rent is outstanding for \$1,550.00 but the landlords refused the money. When asked if the tenants would be in a position to pay the outstanding amount now, the tenant stated that they could not and the tenants ask for the rent to be reduced.

#### Tenants' Testimony Respecting Tenants' Monetary Claims and Repairs

The tenant also testified that the parties had an agreement that the security deposit would be paid after repairs to the rental unit were made by the landlords. No move-in condition inspection report was completed by the parties, but a walk-through was done. When the tenants arrived, the windows were open and the smells that are now throughout the rental unit were not evident. The smell of cat spray is so bad that the tenants cannot use the lower level of the rental unit. The tenant is allergic to cats and his son has asthma and the tenancy agreement states that no pets are allowed. The tenant told the landlords that he and his son could not be around cats, but the landlords failed to tell the tenants that tenants in the lower level had 2 cats. Further, the tenant in the lower level advised that he used to live in the dispute rental unit with his sister who had 6 cats. The smell is overpowering and has had health effects for the tenant's son and the tenant, and the tenants have to clean with bleach daily. The landlord's response to the tenant about the complaint was to boil Lysol to get rid of the cat spray smell. The landlord also promised to have the rental unit professionally cleaned within a month but has not yet kept the promise. The tenant stated that whenever the heat comes on, cat hair blows up the vents and is everywhere. If the tenants were advised

that there were cats on the premises the tenants would not have moved in. The tenant also testified that the tenants attempted to move out of the rental unit a few days after moving in and after paying half a month's rent. The landlords' response was that the tenants would be permitted to move out, but the landlord would be keeping \$300.00 of the \$575.00 paid and the tenants could not afford that.

The tenant also testified that there are live wires sticking out of the wall in the kitchen and the tenant suffered a shock from touching it. The smoke detectors don't work, a window is cracked, another has a bracket holding it together which is falling apart, and numerous other repairs are required.

The tenant also referred to photographs provided by the landlords and pointed out a photograph showing a large piece of cardboard leaning up against the wall with a paint spot beside the cardboard, and testified that the cardboard is covering up graffiti that was in the rental unit when the tenants moved in.

#### Landlords' Testimony Respecting Tenants' Monetary Claims and Repairs

The landlords dispute that the tenants attempted to pay rent or that the landlords refused to take the rent. The landlords agree however that the tenants wanted to end the tenancy a few days after moving in and the landlords agreed so long as the tenants agreed to the landlords keeping \$300.00 of the \$575.00 rent paid for the first half-month of the tenancy.

The landlords have provided 8 photographs of the rental unit which are all date-stamped November 27, 2013, and the landlord testified that they were taken on that date. Identical copies have been provided to the tenants. The photographs show a clean unit in a good state of repair. One of the landlords testified that new hardwood floor had been installed and the rental unit had been entirely painted about a year ago. Previous tenants had asked for permission to paint a child's bedroom and the landlord agreed. The photograph showing the large piece of cardboard may be covering graffiti but the landlord also agrees that the particular room was not re-painted after the previous tenant painted. The remainder of the rental unit was not re-painted by the previous tenant.

The landlord also testified that the brackets on the windows were placed there by the landlord and that they were safe and secure.

The landlord is also an electrician and would not and did not leave live wires exposed.

The landlord also denies that the tenant ever mentioned allergies. The tenant was advised at the outset that the tenants in the lower level had 1 cat. Once the tenant complained, the cat was neutered, and the landlord denies that they had 2 cats.

The landlord further testified that the tenants loved the place when they first viewed it, and the tenant has told nothing but lies.

The other landlord testified that the tenants advised that the stove and oven didn't work, so the landlords replaced it. At no time did the tenants ask for a reduction in rent.

### Analysis

#### Notice to End Tenancy and Unpaid Rent

Where a tenant disputes a notice to end tenancy the onus is on the landlord to prove the notice, which includes the reasons for issuing it. In this case, I have reviewed the notice and I find that it is in the approved form and contains information consistent with the *Residential Tenancy Act* and with the testimony of the parties. I also find that the tenants disputed the notice within the 5 days required under the *Act*.

The tenants do not deny the amount of rent owing but have provided testimony that the landlords refused the rent money on March 4 and again toward the end of March. The landlords dispute that testimony. The tenants ask that the rent be reduced and don't have the money now to pay the arrears. I am satisfied that the tenants are hopeful that the rental amount will be reduced to provide a reduction in the amount of rent owed and payable in the future. However, the *Residential Tenancy Act* does not give me the authority to arbitrarily decide what the rent should be. The *Act* states that I may order that past or future rent be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement, but I must be satisfied that the landlords have failed to comply with the *Act* or the tenancy agreement. Further, the *Act* states that a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, regulations or the tenancy agreement. I am not satisfied that the tenants have established that the landlords refused any rent money, given that the landlords were prepared to end the tenancy a few days after it started for \$300.00. I cannot see the landlords refusing rent money when they were not prepared to end a tenancy without collecting rent money.

Therefore, I find no reason to cancel the notice to end tenancy, and I find that the landlords are entitled under the *Act* to an Order of Possession.

The landlords have applied for a monetary order for \$1,550.00 in unpaid rent for February, March and April as well as for loss of revenue for the month of May, for a total of \$2,700.00. Given that it is now the end of April, I find that the landlords are entitled to half a month's rent for the inability to re-rent the rental unit by May 1, 2014. I find that the landlords have established a monetary claim for \$2,125.00.

#### Tenants' Monetary Claims and Repairs

The tenants apply for a monetary order in the amount of \$2,000.00 for loss of enjoyment of the rental unit due to the overpowering smell and the tenants' resulting loss of use of the lower level of the rental unit.

The tenant stated that the landlord was advised that they could not be around cats and the landlords assured the tenants that pets were not permitted. The parties also agree that the tenancy agreement specifies that pets are not allowed. The tenant stated that if the tenants knew there were cats in the other rental unit the tenants would not have rented. I accept that testimony, and I find that the landlords did not tell the tenants about cats in the previous tenancy or that the other rental unit currently had a cat or perhaps 2. One of the landlords testified that the lower level tenant only had one cat and it was neutered. The landlords offered no further explanations other than to say that the tenant loved the place and has told nothing but lies. I do not accept that.

In the circumstances, I accept that the tenants have not been able to enjoy the full use of the rental unit. I find that "no cats allowed" was a material term of the tenancy. I also find that the landlords failed to disclose that cats were in the lower rental unit, that the tenants have established the monetary claim, and I find the amount to be reasonable.

With respect to the tenants' claim for a reduction in rent for repairs, services or facilities agreed upon but not provided, I must consider the testimony of the parties with respect to what the landlords promised. The *Act* states that I may order that past or future rent be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement. Having found that \$2,000.00 for the loss of use of the lower level of the rental unit is reasonable, I find that the tenancy has been devalued by \$445.00 per month. Since the tenants' application for an order cancelling the notice to end tenancy has been dismissed, the tenants are not entitled to any further reduction.

The tenant also testified that the landlords promised to have the rental unit professionally cleaned and have not done that to date. There is no evidence of that.

Having found that the landlords owe the tenants money and the tenants owe the landlords money, I find it reasonable to off-set those amounts, and I hereby grant the landlords a monetary order for the difference in the amount of \$125.00.

Since both parties have been partially successful with the applications, I decline to order that the landlords recover the filing fee from the tenants.

Since the tenants' application for an order cancelling the notice to end tenancy has been dismissed, I also dismiss the tenants' applications for an order that the landlords make emergency repairs for health or safety reasons and for an order that the landlords make repairs to the unit, site or property.

### Conclusion

For the reasons set out above, the tenants' application for an order cancelling a notice to end tenancy is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenants.

I hereby grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$125.00.

The tenants' application for an order that the landlord make emergency repairs for health or safety reasons is hereby dismissed without leave to reapply.

The tenants' application for an order that the landlords make repairs to the unit, site or property is hereby dismissed without leave to reapply.

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: May 02, 2014

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Residential Tenancy Branch

