



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPB, MND, MNSD, MNDC, FF  
                                 MT, CNC, LRE, FF

### 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 for cause; for an Order of Possession for breach of an agreement; for a monetary order for damage to the unit, site or property; 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 be permitted to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order granting more time to dispute a notice to end tenancy than permitted by the *Residential Tenancy Act*; for an order cancelling a notice to end tenancy for cause; for an order suspending or setting conditions on the landlords' right to enter the rental unit; and to recover the filing fee from the landlords for the cost of the application.

The hearing did not conclude on its first day and was adjourned to the following day for a continuation of testimony. On both days of the hearing both tenants attended and were also represented by an agent. One of the landlords attended both days of the hearing and acted as spokesperson; the other attended only on the second day. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties gave affirmed testimony and were given the opportunity to cross examine each other on the evidence and testimony provided, all of which 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 cause?
- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for breach of an agreement?

- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Should the tenants be permitted more time than permitted under the *Act* to dispute a notice to end tenancy?
- Should the notice to end tenancy for cause be cancelled?
- Have the tenants established that the landlords should abide by an order suspending or setting conditions on the landlords' right to enter the rental unit?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 2012 and the tenants still reside in the rental unit. Rent in the amount of \$1,100.00 per month is payable in advance on the 1<sup>st</sup> day of each month, plus 60% of hydro, gas and cable, and there are no rental arrears. The rental unit is the upper unit of a house and the lower level is also tenanted. The tenants in the lower level pay the other 40% of the utilities. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$550.00 which is still held in trust by the landlords. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that the tenants were served with a 1 Month Notice to End Tenancy for Cause on February 25, 2014 by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated February 25, 2014 and contains an expected date of vacancy of March 31, 2014. The reasons for issuing the notice are:

- Tenant is repeatedly late paying rent;
- Tenant has caused extraordinary damage to the unit/site or property/park; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenants were late with the rent in November, 2013 having paid \$600.00 on November 7 and \$500.00 on November 13. The tenants were also late with rent for several months after that, having paid rent on December 5, 2013, January 5, 2014, February 3, 2014 and March 2, 2014. The landlords were patient to being with and wanted to work with the tenants but the late rent payments continued. The

landlords served the tenants with 10 Day Notices to End Tenancy for Unpaid Rent or Utilities and have provided copies for this hearing.

- The first is dated December 16, 2013 for failure to pay utilities and contains an expected date of vacancy of December 31, 2013. A note on the bottom states: "Received payment Dec. 19<sup>th</sup> cash."
- The next is dated December 2, 2013 for failure to pay rent due on December 1, 2013 and contains an expected date of vacancy of December 15, 2013. A note on the bottom states: "Received payment Dec. 5<sup>th</sup> cash."
- The next is dated January 16, 2014 for failure to pay utilities and contains an expected date of vacancy of January 31, 2014. A note on the bottom states: "Payment received Jan. 20<sup>th</sup> e-transfer."
- The next is dated January 2, 2014 for failure to pay rent for January and contains an expected date of vacancy of January 15, 2014. The note on the bottom reads: "Payment Received Jan 5<sup>th</sup> cash."
- The next is dated February 2, 2014 for failure to pay February rent and contains an expected date of vacancy of February 15, 2014. The note on the bottom reads: "Payment Received Feb 3<sup>rd</sup> 3-transfer."
- The next is dated March 2, 2014 for failure to pay March rent and contains an expected date of vacancy of March 15, 2014. Again, a note on the bottom reads: "Payment Received Mar. 2 e-transfer."

The landlords have also provided copies of bank account statements showing the dates of payments and e-transfers. Each of the notices were served on the dates that they were issued by posting them to the door of the rental unit.

The landlord further testified that the tenants in the lower level called the landlord in January, 2014 stating that a fuse blew. The fuse box is in the garage which is shared by both units, and neither the landlord nor the tenant could get at it due to items belonging to the tenants in the upstairs unit; the garage had been totally overtaken by their belongings. The landlord has provided photographs to substantiate the magnitude of the testimony. The other landlord wrote a letter giving the tenants 2 weeks to clean it up, and on January 26, 2014 an inspection of the garage and the rental unit was completed. When the landlord attended, the rental unit was very unsanitary and in disarray. There were punch marks in the metal kitchen door like dents, the crown molding from the kitchen cabinets had been pulled off, some ceramic tiles on the kitchen floor were cracked, chips appeared in the bathroom sink, and the tenants also had multiple reptiles and a cat. The landlord pointed out that the Addendum to the tenancy agreement states: "The tenant agrees that there is no smoking, pets or drugs allowed in the suite."

The landlord called the insurance company to find out if the landlords were covered for tenant damages and discovered that they were, so an inspection took place again in the rental unit with a restoration company on March 6, 2014. Their report has been provided for this hearing which sets out repairs and costs, and the landlords claim \$7,000.00 from the tenants. The landlord is aware that a tenant is required to repair any damage caused by the tenant at the end of the tenancy, but wishes to pursue the damage claim at this point in the tenancy in any event.

The first tenant testified that the 1 Month Notice to End Tenancy for Cause was not served on the tenants. The tenants did not receive it until served with the Landlord's Application for Dispute Resolution and notice of hearing documents for this hearing. The tenants immediately disputed the notice as soon as the landlord's package was received which was on March 14, 2014 by registered mail.

The tenant further testified that none of the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were ever received. The tenant also disputes the landlords' evidence respecting the dates that rent and utilities were paid. The landlords had a post-dated cheque for December's rent and didn't cash or deposit it until later in the month. The same happened in January, 2014 – the landlords cashed the cheque on January 6, 2014. February's rent was paid by e-transfer on January 31, 2014 and was received by the landlord's bank on February 1, 2014. March's rent was also paid March 1, 2014 by e-transfer but the tenant was having difficulty with the internet system and it was not received until about 2:00 a.m. on March 2, 2014, and the landlord didn't accept it until the 3<sup>rd</sup>. Copies of the e-transfer memos have been provided.

The tenant further testified that the tenants had caged animals at the outset of the tenancy and the landlords said it was okay as long as they were caged or in a tank, but if a cat was obtained the tenants would be required to pay a pet damage deposit. There was a cat in the rental unit but the tenants have found another home for it, and it was not there long.

The tenant also testified that within 3 days of receiving the landlords' letter the garage was cleaned up.

The tenants also called a tile company to see if the broken tiles in the kitchen can be replaced. The representative viewed the flooring and told the tenants that the tiles were not laid right in the first place; the fridge and sink both leak and the tiles are cracked in those areas. The landlords have been told. Also, when the tenants told the landlord that the dryer was not hooked up properly, the landlord got defensive.

The tenant also testified that the tenants called the safety authority for gas and electricity for an inspection, and neither passed the inspection.

The other tenant testified that he left for work at 6:00 a.m. on February 26 and the 1 Month Notice to End Tenancy was not posted to the door of the rental unit. The tenant denies that the landlords served it on February 25 or that any of the other notices were served. The tenant found out about them only after being served for this hearing.

The tenant further testified that the landlords did not provide the tenants with notice for the inspection that took place on March 6. The landlord, insurance adjuster and restoration company employee walked in. The only indication of their visit was a text message from the landlord stating that 1 person was going, and that message was in response to the tenant's text to the landlords asking for repairs to leaking sinks and the broken fan. There was no other response from the landlord and nothing got fixed.

The tenant also testified that the copy of the tenancy agreement provided for this hearing is not identical to the one that the parties signed. The one that the parties signed had a pet damage deposit notation written on top. Further, the move-in condition inspection report wasn't received from the landlord until January 20, 2014.

The tenant also testified that repairs are required to the rental unit and denies that the tenants have caused extraordinary damage. The front cover on the stove came off and the landlord's brother fixed it but now the screws have come loose again. The tenant denies pulling on the door during the self-cleaning cycle. The landlords wanted the tenants to pay for it, and they paid \$100.74.

The bathroom sink started leaking about a year ago; a valve is broken and numerous chips had been repaired prior to this tenancy. The ceiling fan in the bedroom was not installed properly and it wobbled. The tenants took it down because it was over their bed. Further, the crown molding was installed with very short nails, and when the tenant placed a box of cereal up there, it came right off. The transition strips did the same and were only held in place with 2 nails. The baseboard in the kitchen was pulled off by the tenants' baby, and just by opening a window, the brittle latch broke. Grout is missing from between the tiles in the bathroom in front of the sink where it leaks. Boards have fallen out of the fence from rot.

Numerous photographs have also been provided.

In rebuttal, the landlord testified that the tenants have always stated that they haven't received documents, such as utilities. The bills are copied and stapled to a calculation sheet and placed in the respective mailboxes. The only utilities outstanding at present are not yet due.

### Analysis

The *Residential Tenancy Act* states that a document served by posting it to a door or other conspicuous place is deemed to be served 3 days after posting. The landlord has testified that the 1 Month Notice to End Tenancy for Cause was served in that manner on February 25, 2014. The tenants deny ever receiving it, and deny receiving any of the other notices that the landlord has testified were also served in that manner. The landlord also testified that the service for each of those notices was witnessed by the other landlord, but the other landlord did not provide any testimony to corroborate that. The tenants have applied for more time than permitted by the *Act* to dispute the notice and testified that the first they knew about it was when the landlords' application and notice of hearing were received by registered mail. The evidence shows that the landlords filed the application for dispute resolution on March 11, 2014 and served the tenants on March 12, 2014 by registered mail. The documents are deemed to have been received 5 days later, or on March 17, 2014. The tenants filed the application for dispute resolution disputing the notice to end tenancy on March 20, 2014. I have also reviewed the other notices to end tenancy, and it appears that the landlords issued a notice on December 2, 2013 while in possession of a post-dated cheque for December 1, 2013. The same thing happened in January, and I find that if the notices were in fact served by posting them, the landlord would have taken the time to prepare and go to the rental unit to post notices to end tenancy without checking to see if transfers had been made electronically for February and March, 2014. The tenant testified that he went to work at 6:00 a.m. on February 26, 2014 and the notice was not posted to the door. In the circumstances, I am not satisfied that the landlords have established that the tenants were served with the 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit on February 25, 2014, and the tenants' application for more time to dispute the notice to end tenancy is hereby granted.

Where a tenant disputes a notice to end tenancy for cause, the onus is on the landlord to prove its validity, which can include the reasons for issuing it. I find that the notice is in the approved form and contains information relevant to this tenancy. With respect to the reasons for issuing it, I find that the landlords have failed to establish that rent was late for December through March. The landlords did not dispute that they had post-dated cheques for December and January, and the tenants have provided evidence of the e-transfers.

Further, I am not satisfied that the landlords have established that the tenants have caused extraordinary damage to the rental unit. The tenants have raised some issues about installation and things coming apart, but I have heard no evidence of extraordinary damage. I find that the damages that exist have not been proven to be the fault of the tenants.

With respect to breaching a material term of the tenancy agreement, the tenant testified that the garage was cleaned up within 3 days of the landlord's letter requesting it be cleaned up, and the landlords did not dispute that.

In the circumstances, I am not satisfied that the landlords have established that the tenants have breached the *Act* or the tenancy agreement, and the notice to end tenancy is hereby cancelled. The landlords' applications for an Order of Possession are hereby dismissed and the tenancy continues.

In order to be successful in a claim for damages, the onus is on the landlords to establish the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlords made to mitigate or reduce such damage or loss.

The *Act* requires a tenant to repair any damage caused by the tenant prior to the end of the tenancy. In this case, the tenancy has not ended. Further, the tenants have requested repairs, but the landlords responded only with a note saying that an inspection was being done by the insurance company. The landlords' applications for a monetary order and to keep the security deposit in partial satisfaction of the claim are dismissed.

With respect to the tenants' application suspending or setting conditions on the landlords' right to enter the rental unit, I accept the tenant's testimony that on one occasion the landlord and 2 other people attended, however the *Act* specifies that a landlord may enter a rented unit only when specific circumstances warrant it, and one of those circumstances is if the tenant agrees at the time of entry. Therefore, I dismiss the tenants' application, and I order the landlords to comply with the *Act* by entering the rental unit upon giving the tenants at least 24 hours written notice, and that the notice comply with the *Act*, unless the tenants agree to the entry at the time.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee. I order the tenants to deduct that amount from a future month's rent as full recovery.

### Conclusion

For the reasons set out above, the landlords' applications for an Order of Possession for cause and for breach of an agreement are hereby dismissed. The 1 Month Notice to End Tenancy for Cause issued on February 25, 2014 is hereby cancelled.

The landlords' applications for a monetary order are hereby dismissed without leave to reapply.

The landlords' application to keep the security deposit is hereby dismissed.

The tenants' application for an order suspending or setting conditions on the landlords' right to enter the rental unit is hereby dismissed.

I hereby order the landlords to comply with the *Residential Tenancy Act* by providing the tenants with no less than 24 hours written notice to enter the rental unit unless the tenants give permission at the time of entry, or unless otherwise authorized by the *Act*.

I hereby order the tenants to deduct \$50.00 from a future month's rent as full recovery of the 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: May 02, 2014

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Residential Tenancy Branch



