



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ACD Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF  
ERP, RP, PSF, CNR

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord company and by the tenants. The landlord company has applied for an Order of Possession and monetary order 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 permitting the landlord 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 that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; and for an order that the landlord provide services or facilities required by law. The tenants have named a landlord who is not a landlord company but an employee of the landlord company.

One of the tenants attended the hearing, and the named landlord also attended. The landlord also represented the landlord company, and the tenant represented both tenants.

During the course of the hearing, the tenant applied to amend the application to show that the tenants also apply for an order cancelling a notice to end tenancy for unpaid rent or utilities, and the landlord opposed that application. The tenant stated that the main dispute is the notice to end tenancy and missed checking off the box. The landlord stated that rent has not been paid and therefore, the tenant ought not to be permitted to now dispute the notice to end tenancy, but did not indicate that the landlord would be prejudiced by the application. Therefore, I allow the amendment.

The parties gave affirmed testimony and were given the opportunity to cross examine each other, however, no evidence was provided prior to the commencement of the hearing. The landlord was permitted to provide a copy of a notice to end tenancy by

facsimile to the Residential Tenancy Branch after the hearing concluded. No other issues with respect to service or delivery of documents were raised.

### Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenants for unpaid rent or utilities?
- 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 notice to end tenancy for unpaid rent or utilities be cancelled?
- 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 the landlords should be ordered to provide services or facilities required by law?

### Background and Evidence

The landlord testified that this fixed term tenancy began on February 14, 2014, although one of the tenants resided on the rental property prior as a room-mate of another tenant under a different tenancy agreement. This tenancy expires on January 31, 2015, and the tenants still reside in the rental unit. Rent in the amount of \$1,650.00 per month is payable in advance on the 1<sup>st</sup> day of each month. A written tenancy agreement exists, however a copy has not been provided. The landlord also testified that the tenants did not pay a security deposit or a pet damage deposit, and the landlords withdraw that portion of the application.

The landlord further testified that the tenants failed to pay rent in full when it was due in March, 2014, leaving a balance outstanding of \$1,400.00. The landlord attempted to reach the tenants but they would only communicate by email, and the rent didn't get paid. On March 22, 2014 the landlord issued a 10 Day Notice to End Tenancy for

Unpaid Rent or Utilities by personally handing it to one of the tenants that day. The landlord then posted a copy of the notice to 2 doors of the rental unit on the same day. The landlord testified that the notice is dated March 22, 2014 and contains an effective date of vacancy of March 31, 2014, and that the effective date of vacancy ought to have been April 1, 2014. The notice states that the tenants failed to pay rent in the amount of \$1,400.00 that was due on March 1, 2014. Now arrears have accumulated for April and May rent, and the landlord testified that no rent has been paid by the tenants since the issuance of the notice.

The landlord further testified that the application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement refers to cleaning that may be required in the rental unit, and withdraws that portion of the claim.

The landlords request a monetary order in the amount of \$4,700.00 and recovery of the filing fee. The landlord stated that \$50.00 was paid for filing the Application for Dispute Resolution.

The tenant testified that paying \$1,650.00 for a rental unit that has black mould growing, leaks in pipes and a flooding laundry room is not worth it. The tenant requests that the landlord make repairs.

The tenant further testified that another room-mate will be found and rent will get paid, and once the repairs are done, the tenants will take care of the rent.

### Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due under the tenancy agreement even if the landlord fails to comply with the *Act* or the tenancy agreement.

The *Act* also states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant must pay the rent in full within 5 days, in which case the notice is of no effect, or dispute the notice within that 5 day period. If the tenant fails to do either, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice which must be no less than 10 days after service.

In this case, the landlord testified that he personally handed a copy of the notice to end tenancy to one of the tenants on March 22, 2014. The tenant did not dispute that testimony, and I find that the tenants were served on that date. The tenants filed the Tenant's Application for Dispute Resolution on March 28, 2014, which is beyond the 5 days permitted under the *Act*. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy.

I have reviewed the notice to end tenancy provided by the landlord, and I find that it is in the approved form, contains information required by the *Act*, and both pages of the 2-page form have been provided. The *Act* also states that incorrect effective dates contained in a landlord's notice to end tenancy are changed to the nearest date that complies with the *Act*, which I find is April 1, 2014. The tenants have not paid the rent and have not moved out of the rental unit, and I find that the landlords are entitled under the *Residential Tenancy Act* to an Order of Possession on 2 days notice to the tenants.

With respect to the landlords' application for a monetary order, the tenant did not dispute the landlord's testimony that \$1,400.00 was outstanding when the notice was issued, the tenants have not paid any rent since, and that rent has now accumulated to \$4,700.00. I find that the landlords have established a monetary claim as against the tenants in the amount of \$4,700.00. The landlords are also entitled to recovery of the \$50.00 filing fee for the cost of the application.

The landlord also testified that no security deposit or pet damage deposit was collected from the tenants, and the tenant did not dispute that testimony.

Since the tenants have not been successful in obtaining an order cancelling the notice to end tenancy, and the tenancy is ending, I dismiss the tenants' application.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenants.

The landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed as withdrawn.

The landlords' application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit is hereby dismissed as withdrawn.

The tenants' application is hereby dismissed in its entirety.

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 \$4,750.00.

These orders are final and binding and may be enforced.

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 16, 2014

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Residential Tenancy Branch

