



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Millstream Ventures Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MND, MNR, MNSD, MNDC, FF,O  
MT, CNR, MNDC, OLC, RP

### Introduction

This hearing was convened by way of conference call concerning applications filed by the landlords and by the tenants. The landlord company has applied as against two tenants for an Order of Possession and a monetary order for unpaid rent or utilities; 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 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. One of the named tenants has filed the claim as against the landlord company and the named landlord for 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 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 comply with the *Act*, regulation or tenancy agreement; and for an order that the landlords make repairs to the unit or site.

The named landlord attended the hearing as agent for the landlord company and both tenants named by the landlord also attended. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other, 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.

No issues with respect to service or delivery of documents or evidence were raised.

The parties were advised at the outset of the hearing that due to the amount of evidence provided and the number of applications each party has made, that there would likely be insufficient time to conclude the hearing, and the hearing focused on the notice to end tenancy. The balance of the applications is adjourned.

Issue(s) to be Decided

The only issues to be decided in today's hearing are:

- Should the tenants be permitted more time than permitted by the *Act* to dispute a notice to end tenancy?
- Should the notice to end tenancy be cancelled?
- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?

Background and Evidence

The landlord testified that one of the named tenants moved into the rental unit on November 1, 2013 as a co-tenant with an existing tenant. The existing tenant moved out and the tenant and the landlord entered into a new tenancy agreement for a tenancy to begin on January 1, 2014. A copy of the agreement has been provided. Rent in the amount of \$869.00 per month is payable in advance on the last day of each month for the following month. The landlord also collected a security deposit in the amount of \$434.50 which is still held in trust by the landlord.

The landlord also testified that the tenant has been repeatedly late paying rent and the landlord has issued several notices to end tenancy and has provided copies as follows:

- Dated 20 Dec 2013 for \$869.03 due 30 Nov 2013 effective 01 Jan 2014
- Dated 16 Feb 2014 for \$869.00 due 01 Feb 2014 effective 26 Feb 2014
- Dated 03 May 2014 for \$3,984.00 due 30 Apr 2014 effective 13 May 2014
- Dated 30 May 2014 for \$3,474.00 due 13 May 2014 effective 09 Jun 2014
- Dated 10 Jun 2014 for \$25,000.00 due 01 Jun 2014 effective 20 Jun 2014
- Dated 19 Jun 2014 for \$25,000.00 due 01 Jun 2014 effective 29 Jun 2014

The landlord testified that the one dated May 3 which contains an effective date of vacancy of May 13, 2014 was personally served on the tenant on May 3, 2014.

On May 13, 2014 the tenant deposited \$400.00 into the landlord's bank account and authorized the landlord in writing to keep the security deposit. A copy of that agreement has also been provided. The landlord spoke with the tenant's mother who agreed to take responsibility for unpaid rent. The landlord took that as an enforceable verbal agreement and has named the tenant's mother as a respondent in this application. The parties also exchanged emails wherein the landlord gave the tenant an extra 3 days to move out, but the tenant did not move out and did not pay any more rent. The landlord disagrees that the tenancy has been reinstated and has provided a copy of an email

dated May 16, 2014 wherein the landlord advises the tenant that he had agreed to extend the eviction if payment was made, but the tenant hadn't paid. The landlord also disagrees that the notice to end tenancy should be cancelled and asks for an immediate Order of Possession.

The landlord has also provided a hand-written ledger of rent due, rent paid, interest charged, and a balance. The ledger runs from November 1, 2013 to June 1, 2014 and shows an outstanding balance to the end of June of \$4,156.62. The landlord also pointed out that the tenancy agreement states at paragraph 5: "An interest penalty at an annual rate of 15% or .04109% daily shall be applied to any outstanding rent or damage repair costs payable. The interest payable on \$100.00 for 10 days would be \$0.41." The landlord stated that even though the agreement says it's a penalty, it really isn't and the landlord charges interest on over-due accounts.

The landlord also referred to Residential Tenancy Branch Policy Guideline 13, Rights and Responsibilities of Co-tenants which states that co-tenants are jointly responsible for meeting the terms of the tenancy agreement and have equal rights under the agreement. It also states that co-tenants are jointly and severally liable for any debts or damages relating to the tenancy and a landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants.

The tenant testified that he didn't file a dispute within 5 days for several reasons: he believed he could pay up the arrears, but work didn't go as well as he had hoped; he didn't know how or whether or not he needed to file a dispute because several notices had been issued and nothing came of it; he is attending counselling to assist with daily life and responsibilities, and asked his mother to assist. His mother spoke to the landlord and to the Residential Tenancy Branch and learned more about the law.

The tenant further testified that a co-tenant moved into the rental unit on March 1, 2014 and the landlord prepared another tenancy agreement for both tenants. Each was responsible for paying half of the rent. The landlord told the tenant and the co-tenant that he would make copies of the agreement and provide them but never did. The co-tenant moved out on May 9, 2014. During cross examination, the landlord asked the tenant if he and the co-tenant had the agreement, were to sign it, and return it to the landlord but never did. The tenant responded that the landlord took it to copy it for them but did not return any copies.

The other tenant named in the landlord's application also testified. She stated that she is not and never was a tenant and is the mother of the tenant. She also testified that she told the landlord she would encourage her son to get into a job placement program but never entered into any agreement with the landlord verbally or otherwise.

She also testified that during the tenancy, the tenant called her because the landlord had arrived at the rental unit and was taking photographs of the tenant's belongings. She went to the unit and saw the landlord doing so and writing an inventory telling the parties that he owned all of the tenant's belongings according to the tenancy agreement, which states: "7. It is understood and I/we understand and agree – in the event of any rent payable becoming overdue in excess of 20 days, I/we agree to the immediate sale of any and all of my/our possessions to the landlord for \$1.00 at the landlord's option. I/we understand and agree that I/we can purchase these same possessions from the landlord within a further 30 days for \$1.00 when and only when all rent arrears are paid in full. In the event I/we do not pay all rent or damage arrears within the 30 day period, the landlord may resell any former tenant possessions at public auction. Any sale proceeds exceeding the amount owing for rent or damages shall be refunded to the tenant(s) without delay by the landlord."

She stated that the tenancy agreement was made to benefit the landlord only, not the tenant. That put up red flags for her and she did some research. The Residential Tenancy Branch told the tenant's mother that the landlord would not be successful with enforcement, and the tenants' application for dispute resolution was filed.

She further testified that the landlord issued several notices to end tenancy and never did anything with respect to enforcement. He told her in an email that he had no faith in the Residential Tenancy Branch. He went to her house, took photographs and named her as a tenant in this application. She called the police about his harassment who advised her they would talk to the landlord and tell him to stop harassing her, and she hasn't heard from him since. Both hearing packages were served to the tenant, but none were served to her.

### Analysis

Firstly, with respect to the parties named by the landlord in the landlord's application, I find that there is no basis for the tenant's mother to be named as a respondent. Where a party makes a claim against another who disputes the claim, the onus is on the claiming party to prove it. In this case, the tenant's mother disputes that any agreement was made verbally or otherwise, and I find that the landlord has failed to establish any

residential tenancy relationship with her and I dismiss the landlord's application in its entirety against her without leave to reapply.

With respect to the tenant's application for more time to dispute the notice to end tenancy than permitted by the *Residential Tenancy Act*, the tenant testified that he didn't know how to dispute the notice but thought he could pay the arrears and asked his mother to assist. His mother spoke to the landlord and to the Residential Tenancy Branch and learned more about the law and the dispute was filed. The tenant's mother testified that the landlord had never acted on any notices and one of them stated it was for unpaid rent in the amount of \$25,000.00. In the circumstances, I find that the tenant had every reason to believe that they were simply notices and of no consequence, and I grant the tenant the additional time to dispute the notice to end tenancy issued on May 3, 2014.

Where a tenant disputes a notice to end tenancy, the onus is on the landlord to prove its validity, which can include the reasons for issuing it. I have reviewed all of the notices provided by the landlord. I find that the one issued on May 3, 2014 is in the approved form and contains information required by the *Act*.

I have also reviewed the tenancy agreement and find that it contains terms that are contrary to the law. The regulations to the *Residential Tenancy Act* state:

**Non-refundable fees charged by landlord**

**7** (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;

(g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

A landlord may not charge any other non-refundable fees, and the tenancy agreement provides for a \$140.00 fee for unauthorized parking, a \$500.00 fee for having an unauthorized pet, a fee of \$300.00 per room requiring cleaning or painting at the end of the tenancy, \$100.00 for cleaning each appliance at the end of the tenancy, a service fee of \$150.00 for removing debris left at the end of the tenancy, and a \$500.00 per day trespassing fee if the tenant does not vacate by the effective date of a landlord's notice to end tenancy.

The tenant testified that the tenancy agreement provided by the landlord was not the latest one made and that another tenant was responsible for half of the rent. The tenant could not provide a copy because the landlord neglected to give him one. The landlord asked the tenant during cross examination if the tenants were to sign it and return it to the landlord but never did. I find that the landlord has acknowledged that the newer tenancy agreement exists. The landlord is correct with respect to the responsibilities of co-tenants unless the tenancy agreement(s) provide otherwise. The two tenancy agreements that the landlord has provided state: "28. I/we understand and agree to comply with the above requirements and accept full responsibility for this by signing the Agreement below. I/we understand and agree that each tenant is responsible for compliance of this Agreement by all partner tenants," but I do not have the benefit of seeing the newer tenancy agreement.

I have also reviewed the hand-written ledger and the first tenancy agreement provided by the landlord. According to the ledger rent is payable on the first day of the month and the tenants didn't pay any rent for the first 2 months of the tenancy. The ledger shows the interest amount payable for each of those months and almost every month thereafter. I also note that the ledger shows a balance of rent due at the end of November is \$879.71 which includes a \$10.71 interest penalty, and then shows \$879.71 due again for the following month rather than the amount of rent due for that following month. The landlord has multiplied the interest penalties. I also find that the ledger is not consistent with the notices to end tenancy. Having found that the interest fee is contrary to the *Act*, I also find that the amount of rent outstanding on each of the notices to end tenancy is incorrect, as well as the ledger. In the circumstances, I am not satisfied that the landlord has established that the tenant is in arrears of rent and if so what that amount might be. One of the notices to end tenancy states the tenant is in arrears of rent the sum of \$25,000.00 which simply is not the case.

The landlord's application for an Order of Possession for unpaid rent or utilities is hereby dismissed without leave to reapply, all notices to end tenancy are hereby cancelled, and the tenancy continues.

The *Act* also authorizes me to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a party comply with the *Act*, regulations or a tenancy agreement. I find that paragraph 7 of the tenancy agreement is unconscionable and the landlord is not entitled to enforce it or seize any of the tenant's personal belongings or to purchase them for any price regardless of what rent or damage claims may be claimed by the landlord. And as a result of the undisputed testimony of the tenant's mother respecting the landlord photographing and taking inventory of the tenant's personal belongings to enforce that paragraph, I find it necessary to order the landlord and the landlord's agents and employees to comply with Section 29 of the *Residential Tenancy Act*:

**Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

The balance of the applications is hereby adjourned to a date to be fixed by the Residential Tenancy Branch. A Notice of Reconvened Hearing will be sent to each

party which will contain the date, time, phone number and passcode to access the hearing.

Any further evidence that either party wishes to rely on at the reconvened hearing must be provided to the Residential Tenancy Branch and to the other party at least 5 days prior to the scheduled date. In calculating days, the parties must not count the day of delivery of the evidence or the date of the hearing, and there must be 5 clear days between the two dates or more.

### Conclusion

For the reasons set out above, the landlord's application as against tenant, NC is hereby dismissed in its entirety without leave to reapply.

The landlord's application for an Order of Possession for unpaid rent or utilities is hereby dismissed without leave to reapply.

All notices to end tenancy issued prior to this date are hereby cancelled and the tenancy continues.

I hereby order the landlord, the landlord's employees and agents to comply with Section 29 of the *Residential Tenancy Act*.

The balance of the applications is hereby adjourned to a date to be fixed by the Residential Tenancy Branch.

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: July 04, 2014

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Residential Tenancy Branch



