



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MND, MNR, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenants' Application is seeking an order to cancel a 10 day Notice to End Tenancy for unpaid rent.

The Landlord filed an Application claiming for an order of possession based on unpaid rent, and requested monetary orders for unpaid rent, for alleged damages to the rental unit, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Landlord has issued the Tenants two 10 day Notices to End Tenancy, one on July 6, 2014, and a second on August 2, 2014, which included the rent due for June, July and August of 2014. The Landlord amended their Application to request rent owed for September 2014 as well.

The Tenants initially filed to dispute the July 6<sup>th</sup>, 10 Day Notice to End Tenancy, and on or about August 6, 2014, amended their Application to dispute the August 2<sup>nd</sup>, 10 Day Notice to End Tenancy as well.

The hearing proceeded on the issue of the August 2, 2014, 10 day Notice to End Tenancy for unpaid rent (the "Notice to End Tenancy").

Issue(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled or is it valid?

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony of both parties, I find that the Tenants were served with the Notice to End Tenancy for non-payment of rent on August 2, 2014.

The Notice to End Tenancy informed the Tenants that it would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice. The Tenants applied to cancel the Notice as described above.

The Agent for the Landlord testified that the tenancy started October 1, 2010, with the parties entering into a written tenancy agreement. The monthly rent for the rental unit is \$900.00, which is due on the first day of the month, and the Tenants paid a security deposit of \$450.00 at the outset of the tenancy.

The Agent for the Landlord testified that the Tenants had not paid all the rent due for June, July, August and September of 2014, except for a payment of \$100.00 sometime in mid-June. The Landlord claims for all the rent due, less the \$100.00 partial payment, in the amount of **\$3,500.00**

The Tenant testified that they had been on income assistance, but they had been cut off of that and are on hardship assistance. She testified they have not paid the rent but had paid for emergency repairs and submits that the Tenants were therefore entitled to withhold rent.

The Tenant further argued that the rental unit had severe electrical issues. In evidence the Tenant provided an invoice in the amount of \$266.18. The invoice is for two different types of safety inspections and does not indicate any work had been done.

The Tenant further argued it was not her fault they had not paid the rent as they were put on hardship assistance. She argued this was not fair.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants have not paid all the rent due to the Landlord, and therefore, the Notice to End Tenancy is valid and should not be cancelled.

Under section 26 of the Act, the Tenants could not withhold rent unless they had an order from the Residential Tenancy Branch allowing them to do so, or, if the Tenants had paid for emergency repairs in accordance with section 33 of the Act.

I find the Tenants had no such order, nor did they have any evidence they had paid for emergency repairs.

The invoice the Tenants provided is for an inspection **not** repairs. Even if these were emergency repairs (which I find they were not), the Tenants failed to follow the required procedures under section 33 to correctly deduct these from rent, in any event.

Furthermore, they could not withhold all rent but only the amount they had paid for if these were emergency repairs. Nevertheless, I find there is no evidence the Tenants paid any amount for emergency repairs.

I also note the Tenants submitted evidence about a flea treatment for the rental unit; however, a flea treatment is not an emergency repair as defined in section 33 of the Act.

Therefore, I find the Tenants had no authority under the Act to withhold rent from the Landlord and the August 2, 2014, 10 day Notice to End Tenancy must be upheld.

Therefore, I dismiss the Application of the Tenants without leave to reapply, and I allow the Application of the Landlord for an order of possession and a monetary order.

Having found in favour of the Landlord, I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenants. This order must be served on the Tenants in accordance with the Act, and may be filed in the Supreme Court and enforced as an order of that Court.

I also find that the Landlord has established a total monetary claim of **\$3,550.00**, comprised of \$3,500.00 in rent due for June, July, August and September of 2014, (4 x \$900.00 = \$3,600.00, *less the \$100.00 payment in mid-June*), and the **\$50.00** fee paid by the Landlord for this application.

This order must be served on the Tenants in accordance with the Act and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Lastly, I note that the Landlord has applied for monetary compensation for alleged damages to the rental unit. I find that these claims are premature, as the Tenants have a right under the Act to make repairs they are responsible for and to clean the rental unit, up to the end of the tenancy. Therefore, these claims of the Landlord are dismissed with leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 11, 2014

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Residential Tenancy Branch

