



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR, OPC, MNR, MNSD, MNDC, FF  
CNC, MNDC

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an order of possession for unpaid rent or utilities; for an order of possession for cause; for a 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 cancelling a notice to end tenancy for cause and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The landlord was also accompanied by an observer who did not take part in the proceedings, with the consent of the tenants. The parties also provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. The parties 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.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an order of possession for unpaid rent or utilities?
- Is the landlord entitled under the *Residential Tenancy Act* to an order of possession for cause?
- Should the notice to end tenancy for cause be cancelled?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages for loss of quiet enjoyment?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the landlord's claim?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on March 22, 2010 and the tenants still reside in the rental unit. Rent in the amount of \$675.00 per month is payable in advance on the first day of each month, and the tenants are also paying an additional \$30.00 per month toward rental arrears from August, 2013. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$300.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the tenants are currently in arrears the sum of \$1,518.75 which includes the \$375.00 arrears for August, 2013. She stated that the tenants owe \$168.75 for May 2014; \$300.00 for June, 2014; \$675.00 for September, 2014; and that \$675.00 has been received around the first of October, 2014.

The landlord also testified that she personally served one of the tenants with a 1 Month Notice to End Tenancy for Cause on August 31, 2014. A copy of the notice has been provided and it is dated August 31, 2014 and contains an expected date of vacancy of October 1, 2014. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of another occupant or the landlord ("fraud" is written beside);
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

She stated that the parties had been to dispute resolution before during which the tenants' applications were denied. First, at the end of March, 2013 the landlord received a Decision respecting a hearing that the landlord didn't know about. The tenants apparently served an Application for Dispute Resolution by registered mail, but the envelope received by the landlord only had a pamphlet in it, and the landlord didn't know where it had come from. She testified that there have been 4 hearings at the request of the tenants. In one application the tenants wanted repairs and fraudulently testified that they gave the landlord letters, but they hadn't, and had not told the landlord that repairs were needed, nor did they ask for any repairs.

A Review Hearing was conducted and the previous decision wherein the tenants were to get one month of rent free as well as a reduction in rent was set aside. The tenants owe rent for the months that they deducted a portion of the rent.

On September 3, 2014 the landlord served the tenants with both pages of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by placing a copy in the mailbox of the rental unit. The notice is dated September 3, 2014 and contains an expected date of vacancy of September 16, 2014 for unpaid rent in the amount of \$1,518.75 that was due on September 1, 2014. She stated that the tenants did not dispute the notice but put a copy in their evidence package.

The landlord also testified that the tenants have harassed the landlord in writing with belligerent and insulting letters, copies of which have been provided. The tenants have acted in a deceitful, demeaning and fraudulent manner and during the process they've been very uncooperative. The tenants questioned tradespeople that the landlord hired at significant cost, but the tenants accused them of being phonies. During one of the hearings, the tenants said they only received 12 pages of evidence from the landlord, but the landlord testified that she had sent 81 pages to each of them. She also testified that on 2 occasions, one of the tenants commented to 2 perspective tenants that they shouldn't rent from the landlord because she is a slumlord. One of those perspective tenants has also provided a letter to corroborate that testimony.

The landlord seeks an order of possession, a monetary order for the unpaid rent, an order permitting the landlord to keep the security deposit in partial satisfaction of the claim, and recovery of the filing fee for the cost of this application.

The first tenant testified that she has lived in the rental unit for 4 years and has always paid rent and now all of a sudden the landlord finds them to be bad tenants because they're taking a stand. She stated that the landlord causes trouble, harassment and threatened the tenant with a baseball bat. She stated the landlord's harassment and lies are stressing out her nerves, and the tenants claim \$675.00 from the landlord for aggravated damages.

The tenant also testified that the landlord was paid rent directly by the Ministry for a time, and that the evidence shows that on September 25, 2014 the tenants received \$375.00 for shelter for October. Further, a copy of a cheque in the amount of \$675.00 dated September 26, 2014 has been provided, but there is no indication what it's for. Also provided are receipts from the landlord in the amount of \$675.00 each dated September 1, 2014 for September's rent and July 31, 2014 for August's rent. Also provided is a print-out from the Ministry showing that \$375.00 was paid directly to the landlord from the Ministry for June's rent. Other Ministry print-outs have been provided showing that \$705.00 was sent directly to the landlord for rent for March, 2014 and \$506.25 for May, 2014.

The second tenant testified that the tenants have had trouble with the landlord ever since the tenants took the landlord to arbitration to get the rental unit fixed. The landlord is a junkie and a drunk. The walls in the rental unit are moldy and the roof leaks.

On 2 occasions during the course of the hearing, the tenants disconnected from the conference call hearing. During the first occasion, they were absent for 5 minutes and no testimony was heard while waiting for them to re-dial back in. They advised that their phone had died. Once

they left the call on the second occasion, the hearing was not stopped and the landlord's testimony continued in their absence.

### Analysis

In the circumstances, because the tenants have disputed one of the notices to end tenancy but have provided copies of both notices issued by the landlord, I accept that the tenants have disputed both.

I have reviewed the evidentiary material by the parties, and it is clear that the discounted rent was overturned at Arbitration, which has effectively increased the rental arrears. However, the landlord has collected rent after the effective date of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities without issuing anything indicating to the tenants that the rent is accepted for use and occupancy only and does not serve to reinstate the tenancy.

I have also reviewed the 1 Month Notice to End Tenancy for Cause, and I find that the notice is in the approved form and contains information required by the *Residential Tenancy Act*. The landlord testified that the tenants have been deceitful, demeaning and fraudulent, which is evident by the Review hearing Decision. The landlord also testified that on 2 occasions the tenants told prospective tenants not to rent from the landlord because she is a slumlord, and neither tenant disputed that testimony. I find that the landlord has provided sufficient evidence and has given sufficient testimony to convince me that the landlord had cause to issue the notice. Therefore, the tenants' application to cancel the 1 Month Notice to End Tenancy for Cause is dismissed, and I grant the landlord an order of possession on 2 days notice to the tenants.

With respect to the tenants' application for a monetary order, I find no evidence that the landlord has acted inappropriately or contrary to the *Act* or the tenancy agreement, and the tenants' application is dismissed.

With respect to the landlord's application for a monetary order for unpaid rent, I accept that the arrears have accumulated to \$1,518.75.

Since the landlord has been successful, the landlord is also entitled to recovery of the \$50.00 filing fee.

I order the landlord to keep the \$300.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,268.75.

### Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlord on 2 days notice to the tenants.

I further order the landlord to keep the \$300.00 security deposit in partial satisfaction of the landlord's claim, and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,268.75.

The tenants' application is hereby dismissed in its entirety without leave to reapply.

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: October 31, 2014

---

Residential Tenancy Branch

