



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

This hearing dealt with an application by the tenants for an order setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated November 2, 2014 valid?

### Background and Evidence

The landlord testified that he had an agreement for sale for this house with a developer PD. PD moved a person named SW into the house. SW brought in other tenants, including the applicant TG. It is clear from the evidence of both witnesses that SW as not a good tenant.

The applicant OW testified that he had first intended to move into the rental unit in July. However, after a conversation with the landlord in mid-July during which the landlord advised that he wanted SW evicted because he was not paying any rent he decided not to move just then. Eventually SW vacated the rental unit. OW understood that the landlord and TG had an oral agreement to continue TG's tenancy. In mid-August OW moved into the house to help TG with the rent. In August and September he paid his share of the rent to TG; who was to pay the landlord.

OW became frustrated with this situation because the landlord kept telling him that TG was not paying the full rent. He wanted to have the rental arrangement formalized so he prepared a written tenancy agreement. He had TG sign the agreement and then met the landlord in the parking lot of a restaurant where the two of them signed the agreement. OW e-mailed a copy to the landlord seven to ten days later.

The tenancy agreement names OW and TG as tenants. The monthly rent is \$1850.00 due on the first day of the month.

The tenancy agreement splits the rent into two shares; \$1250.00 to be paid by TG and \$600.00 to be paid by OW. Next to TG's share is the notation: "625 on 1<sup>st</sup>, 6245 on 15<sup>th</sup>". The landlord testified he did not agree to this and points out that these provisions are not initialled by him; only by the tenants. OW acknowledged that he neglected to have these provisions initialled by the landlord and stated he was not relying on them.

The landlord also stated that he did not agree to a one year fixed term and suggested that the tenancy agreement had been altered after he signed it. OW stated that they had discussed and agreed to a one year term.

The landlord testified that OW paid \$600.00 when the tenancy agreement was signed on October 6 and that he deposited \$600.00 into the landlord's bank account on November 1.

With regard to the balance of the October and November rents the landlord testified that he had not received any payment from TG although he had received promises to pay. OW testified that TG told him he had paid the landlord in cash and the landlord refused to provide a receipt for the payments. TG did not appear at the hearing; did not testify; and did not submit any written evidence.

The witnesses both testified that the landlord issued and posted a 10 Day Notice to End Tenancy for Non-Payment of Rent on November 2, 2014.

### Analysis

The applicants are co-tenants. That is because they rent the same property under the same tenancy agreement. The law is that co-tenants are jointly and severally responsible for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

There is no dispute that one co-tenant has paid \$600.00 towards the October and November rents.

The only issue is whether the other co-tenant, TG, has paid anything. The only evidence on this point is direct testimony from the landlord and hearsay evidence from the co-tenant, OW. OW's testimony only establishes that TG told him something; it does not establish that he told him the truth. I have no direct evidence of any kind from TG.

Based on the evidence before me I find that TG has not paid anything towards the October and November rent ; that when the 10 Day Notice to End Tenancy was served on the tenants there were arrears of rent owed; and that as of the date of the hearing there continue to be arrears of rent owed. Accordingly I find that the 10 Day Notice to End Tenancy dated November 2, 2014 is valid. The tenants' application is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. The landlord is entitled to an order of possession effective two days after service on the tenant. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

The landlord filed a Monetary Order Worksheet Direct Request form presumably in support of a monetary order for arrears of rent but he did not serve the tenants with an application for dispute resolution claiming a monetary order. Although the *Act* does allow an arbitrator to grant an order of possession to a landlord on a tenant's unsuccessful application to set aside a notice to end tenancy it does not allow an arbitrator to grant a monetary order unless an application for dispute resolution claiming one has been served on the other side.

#### Conclusion

An order of possession, effective two days after service on the tenants, has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

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: November 24, 2014

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Residential Tenancy Branch

