



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MND, MNDC, MNR, FF, ET (Landlords' Application)  
CNR, RR (Tenant's Application)

### Introduction

This hearing convened as a result of a cross applications.

In the Landlords' application, they sought:

1. an Order of Possession based on unpaid rent;
2. an Order of Possession based on a breach of the agreement with the Landlords;
3. a Monetary Order for:
  - a. damage to the unit, site or property,
  - b. for unpaid rent or utilities,
  - c. money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and
  - d. to recover the filing fee; and
4. to end the tenancy early and obtain an Order of Possession.

In the Tenant's application she sought:

5. an Order cancelling the Notice to End Tenancy for unpaid rent issued October 8, 2014 (the "Notice");
6. an Order that the Tenant be permitted to reduce rent for the cost of repairs.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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.

### Issues to be Decided

1. Has the Tenant breached the Act or tenancy agreement, entitling the LandlordS to an Order of Possession and monetary relief?
2. Should the Notice be cancelled?
3. Should the Tenant be permitted to reduce rent for the cost of repairs, services or facilities agreed to but not provided?

### Background and Evidence

The parties confirmed that no residential tenancy agreement existed between the Landlords and the Tenant. The Landlords testified that the tenancy began June 1, 2014. Monthly rent was payable in the amount of \$375.00.

Introduced in evidence was a letter dated May 19, 2014 wherein the Landlords wrote to the Tenant to confirm the terms of her tenancy. This letter is signed by both Landlords as well as the Tenant. In this letter, the Landlords write that the Tenant is to pay \$375.00 in rent, as well as pad rent of \$165.00 per month in addition to "back pad rent". The Landlords also requests a security deposit of \$187.50 and includes the following with respect to payment of the security deposit:

*"payable as you can afford it. I don't care how long it takes, just make an effort.*

As well as the following with respect to payment of rent:

*"I also understand payments for rent may be sporadic, just keep me informed."*

[reproduced as written],

On September 16, 2014 the Landlords again wrote to the Tenant. In this letter they make a formal request for the outstanding rent of \$375.00 for September 2014 and \$375.00 for October 2014 as well as the security deposit of \$187.50, as well as the sum of \$100 owing for wood. The Landlords write that if the Tenant does not pay the outstanding amount in full by October 8, 2014 she will proceed with an eviction.

The Tenant failed to pay rent as requested and the Landlords issued a 10 day Notice to End Tenancy for non-payment of rent on October 8, 2014 indicating the amount of \$937.50 was due as of September 1, 2014 (the "Notice").

The Landlords initially applied for an Order of Possession by way of direct request. The Application for Direct Request documents indicate that the Notice was stapled to the Tenant's door on October 8, 2014. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of October 11, 2014.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, October 16, 2014. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. The Tenant applied for dispute resolution on October 10, 2014.

At the hearing, the Landlords stated that in addition to September 2014 and October 2014 the Tenant also did not pay rent for November 2014 for a total of \$1,125.00 owing for rent. The Landlords also stated that the security deposit of \$187.50 remained outstanding. In total, the Landlords sought the sum of \$1,312.50 for unpaid rent and the security deposit. The Landlord also sought an order for \$200.00 for repainting the manufactured home as well as \$80.00 she claimed was owing to the Landlord for firewood.

The Tenant agreed that she owed three months of rent, however she disputed that any amount was owed for the security deposit. She stated that she was not able to pay another security deposit to the Landlords as she is on income assistance and already provided one to the Landlord's brother when she first rented the manufactured home. She testified that she previously rented the rental unit from the Landlord's brother, and was paying on a "rent to own basis". She said that she paid the Landlord's brother over \$6,000.00 pursuant to this "rent to own" agreement the payment of which included the contents of the manufactured home.

The Landlords confirmed that the Tenant resided in the manufactured home prior to June of 2014.

The Landlord, S.S., testified that they purchased the manufactured home for brother. Subsequently, and without the Landlords' knowledge or consent, he began accepting funds from the Tenant towards the purchase of the manufactured home. S.S. stated that when her brother fell behind in the pad rent payments, she discovered the Tenant was in fact residing in the manufactured home. At this time she was also informed by the Tenant that she paid him \$1,500.00 as a down payment and \$500.00 per month towards the purchase of the manufactured home.

The Tenant testified that she did not ascertain the ownership of the manufactured home prior to entering into this agreement with the Landlord's brother, nor did she have any written documentation to support this agreement, or the amounts she paid. As S.S.'s brother did not have any legal proprietary interest in the manufactured home, he was not able to make such an agreement or accept payment towards its purchase. Further, any claim by the Tenant against S.S.'s brother is outside my jurisdiction.

In any event, the Tenant agrees that she was to pay \$375.00 per month in rent to the Landlords and that she did not pay for September, October or November. She stated that her reason for not paying rent was that the wood stove was inoperable and that consequently she did not have another heat source. This was also the basis of her claim for an Order reducing rent.

In reply, the Landlord stated that she was in the manufactured home on October 26, 2014 and at that time the manufactured home was very warm and the wood stove was clearly working. In support she submitted a photo of the woodstove which she testified was taken that day and which shows it burning wood and working. S.S. also stated that while the wood stove in fact works, there are also baseboard heaters as another source of heat and that in any case the Tenant had heat in the manufactured home contrary to her claims.

In support of her monetary claim for painting, and damage to the rental unit, the Landlord submitted photos of the manufactured home which she stated showed the rooms before and after the Tenant moved in. The Landlords submitted that it was the Tenant who painted the walls pink.

### Analysis

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

The Landlords failed to submit any evidence which would justify an Order ending the tenancy early pursuant to section 56(1) of the Act. Accordingly, that application is dismissed.

Similarly, the Landlords failed to provide any evidence in support of their request for an Order for possession based on a breach of an agreement. Accordingly, that application is dismissed.

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlords are in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent. The Tenant's request for an Order cancelling the Notice is dismissed.

I find that the Landlords are entitled to an Order of Possession effective **two days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Tenant has failed to establish her claim for a reduction in rent for the lack of heat in the manufactured home. The Tenant testified that the wood stove was inoperable. The Landlords testified that it was working on October 26, 2014 and that in any case, electric baseboard heaters provided an alternate source of heat.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I decline the Landlords' request for a monetary Order for repainting the manufactured home. As the Landlords claimed they were not aware of the Tenant's "rent to own" agreement with S.S.'s brother, it is not possible to find that the photos submitted by the Landlords depict the condition of the rental unit prior to the Tenant occupying the space.

Further, I was not provided any evidence as to when the rental unit was last painted, and as such, it is possible to determine if the Landlords satisfied their requirement to paint the interior of the rental unit at reasonable intervals pursuant to *Residential Tenancy Policy Guideline 1. Landlord & Tenant—Responsibility for Residential Premises*.

I decline the Landlords' request for a Monetary Order for the cost of firewood provided to the Tenant as I find this to be an agreement outside the tenancy and therefore not within my jurisdiction.

I find that the Landlord has established a total monetary claim of \$1,175.00 comprised of \$1,125.00 in unpaid rent for September, October, and November 2014 and the \$50.00 fee paid by the Landlords for this application. I grant the Landlord an order under section 67 and this order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

### Conclusion

The Tenant failed to pay rent and her application to cancel the Notice is dismissed. The Landlords are granted an Order of Possession and are granted a Monetary Order for the unpaid rent for September, October and November 2014 as well as the \$50.00 fee paid to file the Landlords' application.

The Tenant's application for an Order reducing rent for lack of heat is dismissed. The Landlords' application for a Monetary Order for firewood and repainting is dismissed.

This decision is final and binding on the parties, except as 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 *Residential Tenancy Act*.

Dated: December 12, 2014

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Residential Tenancy Branch

