



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This is an application filed by the landlord for an order of possession and a monetary order for unpaid rent and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The tenant has acknowledged receiving the landlord's documentary evidence. The landlord has acknowledged receiving the tenant's late documentary evidence. As such, I find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence by each party.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

### Background and Evidence

Both parties confirmed that there was a signed tenancy agreement dated August 7, 2013, but neither has submitted a complete copy. The monthly rent is \$4,300.00.

The landlord states that the tenant was served with a 10 day notice to end tenancy issued for unpaid rent dated November 25, 2014 in person on November 25, 2014 and has submitted a copy of a proof of service statement with a witness as confirmation. The notice states that the tenant failed to pay rent of \$21,500.00 that was due on November 15, 2014 and an effective end of tenancy date of December 5, 2014.

The tenant acknowledged receipt of the notice dated November 25, 2014, but disputes that the landlord, W.B.L is not a landlord. Both parties have submitted copies of a land title search which shows that W.B.L. and Y.Y.B are the two registered owners of the

rental property. The landlord's agent states that since the notice was served that the landlord, W.B.L. or the bank have not received any rent payments.

The tenant acknowledged that at the time of receiving the 10 day notice dated November 25, 2014 that there were rent arrears, but disputes the amount claimed by the landlord, W.B.L. The tenant stated that he had an arrangement with the landlord, Y.Y.B. as she is the one who has been their sole contact when they signed the tenancy agreement and who they would deal with concerning the tenancy. The tenant states that an arrangement was made to pay the arrears and has submitted a copy of a letter dated December 24, 2014 from the landlord, Y.Y.B. In the letter it states that, "There are no outstanding lease payments as of December 24, 2014. The lease agreement is solely between M.R. and Y.Y.B. W.B.L. is not a party to the lease agreement. I would like you to remain as the tenant..."

The landlord seeks an order of possession and a monetary order for unpaid rent for arrears owing from July 2014 to December 2014 for 6 months totalling \$25,800.00, but is aware that the Residential Tenancy Act only allows for a maximum claim of \$25,000.00.

### Analysis

Section 1 of the Residential Tenancy Act defines a landlord as,

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

As such, I find that the tenant's claim that the owner, W.B.L. is not a landlord is unfounded and the owner, W.B.L. is in fact a landlord. I also find for the purposes of this hearing that both W.B.L and Y.Y.B. are jointly landlords for this tenancy and both are subject to the agreement dated August 7, 2013 entered into with the tenants, B.R. and M.R.

I find that the landlord has properly served the tenant in person with a 10 day notice to end tenancy issued for unpaid rent dated November 25, 2014 on the same date.

The landlord's agent is only able to state that he has no knowledge of any rent payments made by the tenant to the landlord, Y.Y.B. I find that in the absence of any evidence to the contrary, that the letter dated December 24, 2014 from the landlord, Y.Y.B. clearly shows that there were no longer any rent arrears and that she wished to continue the tenancy as of December 24, 2014. This confirms the statement of the tenant that an arrangement was made with the landlord, Y.Y.B. that rent was accepted late and that no notice for use and occupancy was given to notify the tenant that the landlord was still seeking an end to the tenancy.

Rent was accepted from the tenant after the allowed time frame of the notice and that the landlord, Y.Y.B. accepted that the tenancy may continue. As such, the landlord's notice dated November 25, 2014 is set aside and the tenancy shall continue. The landlord's application for an order of possession and a monetary order are dismissed.

### Conclusion

The landlord's application is dismissed.

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: January 07, 2015

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Residential Tenancy Branch

