



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Affordable Housing Charitable Association  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

OPR MNR MNSD FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord and the female tenant participated in the teleconference hearing.

Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### 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

The female tenant first began occupying the rental unit in 2011. The rental unit is a subsidized unit where rent is calculated based on the tenant's income.

On July 5, 2014 the landlord, the female tenant and a male tenant signed a tenancy agreement for the same rental unit, for a fixed-term tenancy beginning August 1, 2014 and ending on December 31, 2014. This agreement sets the market rent at \$1500 per month.

On November 19, 2014 the landlord and the female tenant participated in a dispute resolution hearing that resulted in a settlement agreement. The terms of the settlement agreement were as follows:

1. Commencing December 2014 the Tenant will pay 40.00 each month until the rental arrears of \$463.00 have been paid in full;
2. The Tenant will pay the Landlord \$608.00, representing additional rental arrears to the end of November 2014, by November 30, 2014;

3. The Tenant will provide to the Landlord no later than November 24, 2014 the following documents as proof of income:
  - a. The most recent pay stub for each Tenant;
  - b. Bank statements for each Tenant for the months of August, September and October 2014 or a statement that either Tenant has no bank account;
4. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.

On December 2, 2014 the landlord served the tenants with a notice to end tenancy for failure to pay \$356 in rent that was due December 1, 21014.

On December 16, 2014 the landlord and the tenants entered into a new tenancy agreement for a tenancy commencing on January 1, 2015, with a monthly rent of \$1500 before any applicable subsidy.

On January 2, 2015 the landlord served the tenants with another notice to end tenancy for unpaid rent, which indicated that the tenants failed to pay \$2780 in rent due on January 1, 2015. The landlord applied for an order of possession pursuant to the notice to end tenancy served January 2, 2015.

#### *Landlord's Evidence*

The landlord stated that as of August 4, 2014 the monthly rent, based on the income of both tenants, was set at \$1063. The landlord stated that shortly afterward the female tenant informed the landlord that the tenants' income had changed, and based on the tenants' new application for rent subsidy the landlord calculated the tenants' rent to be \$794 as of September 1, 2014. The landlord stated that the tenants were required to provide further proof of their income but did not, so their subsidy was cancelled and their rent for October 1, 2014 was set at the market rent of \$1300. The landlord stated that according to the terms of the settlement agreement dated November 19, 2014 the tenants were to provide further income information but they did not, so the rent stayed at \$1300. The landlord stated that as of the time of the hearing the tenants were in arrears totalling \$4080.

#### *Tenant's Response*

The female tenant stated that the tenants provided all of the information the landlord asked for and they paid all of the rent owed in December. The tenant stated that because the landlord issued a notice to end tenancy in December, the Ministry refused to pay the male tenant's portion of the rent of \$308 for January or February 2015, and therefore only \$608 is outstanding.

#### Analysis

Upon consideration of the landlord's evidentiary and testimonial evidence, I find that the application must fail. The landlord's evidence regarding the calculation of the tenants' monthly

rent is contradictory and confusing. The tenancy agreements indicate that the monthly rent, before applicable subsidies, is \$1500, yet the landlord testified that the market rent was \$1300. It is unclear how the tenants owed \$356 in unpaid rent in December 2014 but \$2780 in January 2015.

If a notice to end tenancy for unpaid rent indicates an incorrect amount of unpaid rent, the notice to end tenancy for unpaid rent may be invalid. In this case, I find that the landlord has not provided sufficiently clear evidence to establish the correct amount of unpaid rent indicated on the notice to end tenancy dated January 2, 2015. I therefore find the notice to end tenancy dated January 2, 2015 is not valid, and I dismiss the landlord's application for an order of possession pursuant to that notice.

The tenant acknowledged in the hearing that there is some outstanding rent for January and February 2015, and I therefore dismiss the landlord's monetary claim with leave to reapply.

As the landlord's application was not successful, they are not entitled to recovery of the \$50 filing fee.

#### Conclusion

The landlord's application for an order of possession pursuant to the notice to end tenancy dated January 2015 is dismissed.

The landlord's monetary claim is dismissed with leave to reapply.

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: February 4, 2015

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Residential Tenancy Branch

