



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF (Landlord's Application)  
CNR, DRI (Tenant's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Landlords and the Tenant.

The Landlords applied for an Order of Possession and a Monetary Order for unpaid rent. The Landlords also applied to keep the Tenant's security deposit, for money owed for loss under the *Residential Tenancy Act* (the "Act"), and to recover the filing fee for the cost of making the Application. The Tenant applied to cancel the notice to end tenancy and to dispute an additional rent increase.

Both parties appeared for the hearing; however, only the female Landlord and Tenant provided affirmed testimony. The parties confirmed receipt of each other's Application and both parties had provided a copy of the notice to end tenancy into written evidence.

The parties were informed of the instructions for the conduct of the proceedings and no questions were raised about the process. The parties were given an opportunity to present evidence, cross examine the other party, and make submissions to me in relation to the evidence provided.

### Issue(s) to be Decided

- Did the Tenant have authority under the Act to withhold January and February 2015 rent?
- Did the Landlords impose an additional rent increase?
- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for unpaid rent for January and February 2015?
- Are the Landlords entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

### Background and Evidence

Both parties agreed that this tenancy started on December 1, 2014 on a month to month basis and that the Tenant paid the Landlord a \$500.00 security deposit at the start of the tenancy.

The Landlord testified that the Tenant had signed a written tenancy agreement on November 23, 2014. The tenancy agreement was provided into written evidence by the Landlords which shows that rent under the agreement is payable by the Tenant in the amount of \$1,000.00 due on the first day of each month.

The Landlord testified that the Tenant paid rent for December, 2014; however, towards the end of December 2014, the Tenant informed the Landlords that he was unable to afford the rent of \$1,000.00 and requested the Landlord for permission to bring a friend into the tenancy to help him pay the rent. The Landlord agreed and completed a Shelter Information form at the request of the Tenant so that the Tenant could be paid rent monies by a third party government organization for the two Co-tenants.

The Landlord testified that despite completing these forms for the Tenant, the Tenant failed to pay rent on January 1, 2015. The Landlord testified that as a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 18, 2015. The Notice was served by attaching it to the Tenant's door and shows an effective vacancy date of January 29, 2015 due to \$1,000.00 in unpaid rent due on January 1, 2015.

The Landlord testified that the Tenant has also failed to pay any rent for February, 2015 and now seeks to recover the unpaid rent for the two months.

The Tenant testified that he had signed the written tenancy agreement with the Landlord on November 23, 2014 agreeing to pay rent in the amount of \$1,000.00 per month, but he was not provided with a copy of the agreement.

The Tenant testified that he spoke to the male Landlord in late December 2014 about his inability to pay for January 2015 rent. The Tenant claims that the Landlord agreed that he could pay \$600.00 for rent and that the Landlord would rent out one of the rooms in the rental suite under a separate agreement with a third party. The Tenant testified that he had no knowledge of who this third party renter was.

The Tenant submitted that the Shelter Information form states that his portion of the rent is \$600.00. When the Tenant was asked as to how much he had paid for January 2015

rent, he testified that as the Landlord had subsequently agreed that his rent under the agreement would be \$600.00, this meant that he had paid \$400.00 excess for December 2014 rent and \$200.00 excess for his security deposit; therefore, these excess payments, totaling \$600.00, covered rent for January 2015.

When the Tenant was asked as to why he had not paid for February 2015 rent, the Tenant submitted that he decided not to pay it pending the outcome of this hearing.

The Landlord denied the Tenant's testimony stating that at no time, either orally or in writing, was the Tenant given permission to reduce his rent to \$600.00. The Landlord explained that the Shelter Information form was completed by them so that the Tenant could get another room mate so that he could pay his rent of \$1,000.00 under the tenancy agreement. The Landlord pointed out that the Shelter Information form clearly stipulates "This form is NOT a tenancy agreement".

The Landlord submitted that even if they had consented to the reduction, which they did not, the Tenant would have still been liable to pay rent for January 2015. This is because the agreement claimed by the Tenant was not made until the middle of December 2014 and did not apply to December 2014 rent when the signed tenancy agreement was still in effect. Therefore, the Tenant still had no right to withhold any rent for January 2015.

The Shelter Information forms provided by the Landlords relate to the Tenant and a third party renter. Both forms indicate that the Tenant and the renter have different portions to pay; however, the same forms indicate that the "TOTAL RENT IF SHARED" is \$1,000.00.

The Tenant stated that he had a Shelter Information form where it shows that the **total** rent payable by him is \$600.00. However, the Tenant was unable to get a copy of this from the third party government organization that was to pay his rent.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement unless the Tenant has authority under the Act to withhold or deduct it.

In this case, both parties provided conflicting evidence regarding the amount of rent that is payable in this tenancy. Therefore, I must first analyse the evidence in relation to the amount of rent payable by the Tenant.

The Tenant claims that the male Landlord reduced the rent from \$1,000.00 to \$600.00 during a conversation they had in December, 2014. However, this was denied by the Landlord who submitted that the amount of rent payable under the written agreement for the rental suite has always been \$1,000.00.

The Tenant relies on a Shelter Information form as evidence that the rent payable under the tenancy agreement is \$600.00. However, the Shelter information forms provided into written evidence show that the total rent is \$1,000.00. If two tenants rent a suite under the same agreement they are jointly and severally liable for the agreement even though they may apportion rent amounts payable between them. Furthermore, third party contracts, such as a Shelter Information form are not enforceable under the Act and the form itself clearly informs the submitter that it is **not** a tenancy agreement.

Therefore, the only evidence that I am able to rely on in terms of making a finding on the amount of rent payable is the tenancy agreement which both parties acknowledged was signed before the tenancy began. A tenancy agreement is a legally binding contract between the parties that can be enforced under the Act.

Accordingly, I find that the written tenancy agreement which the Tenant entered into before the tenancy began required the Tenant to pay rent in the amount of \$1,000.00 per month. I find that there is insufficient evidence before me that this amount was changed and consented to by the Landlords.

The amount of rent payable under a written tenancy agreement is a vital and key component of a tenancy agreement. Therefore, if the Tenant was able to negotiate a reduction in his rent, then it would have been reasonable and prudent to expect the Tenant to have either: obtained the Landlords' written consent; obtained the Landlords' initials on the written tenancy agreement showing the change; provided corroborating or supporting evidence of the Landlords' consent, none of which the Tenant did. The Tenant also failed to pursue remedies under the Act, such as dispute resolution, to determine the rent payable under the tenancy agreement, choosing instead to make deductions without any authority to do so.

Accordingly, I find that the Tenant had no authority under the Act to withhold any rent for January, 2015 and the claim by the Tenant that the Landlord imposed a rent increase is unproven.

The Act also does not allow a tenant to withhold rent pending the outcome of a hearing. Therefore, I also find that the Tenant was not entitled to withhold February 2015 rent.

As the Tenant has failed to pay rent and the effective date of the Notice has now passed, the Landlords are entitled to an immediate Order of Possession. Because I have determined that the rent amount payable under the written tenancy agreement is \$1000.00 per month, I find that the Landlords are entitled to a Monetary Order for unpaid rent for January and February 2015 in the amount of **\$2,000.00**.

I find the Landlords are also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable is **\$2,050.00**. As the Landlords hold the Tenant's **\$500.00** security deposit, I order the Landlords to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlords are awarded the outstanding balance of **\$1,550.00**.

### Conclusion

The Tenant has breached the Act by failing to pay rent under the tenancy agreement. The Landlord did not impose an additional rent increase. Therefore, the Tenant's Application is dismissed without leave to re-apply.

As a result, the Landlords are granted an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Tenant and may then be enforced in the Supreme Court as an order of that court.

The Landlord is allowed to keep the Tenant's security deposit. The Landlords are also granted a Monetary Order for the balance of rent owing in the amount **\$1,550.00**, pursuant to Section 67 of the Act. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

Copies of both orders for service and enforcement are attached to the Landlords' copy of this decision.

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 11, 2015

---

Residential Tenancy Branch

