



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPR, MNR, MNDC, MNSD, FF  
CNC, AAT, AS

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession for cause; for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end tenancy for cause; for an order that the landlord allow access to (or from) the unit or site for the tenants or the tenants' guests; and for an order allowing the tenants to assign or sublet because the landlord's permission has been unreasonably withheld.

One of the tenants attended the hearing and also represented the other tenant. An agent for the landlord also attended and called one witness. The parties and the witness gave affirmed testimony and the parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?
- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Has the landlord established a monetary claim for unpaid rent or utilities?
- Has the landlord established a monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

- Should the notices to end the tenancy be cancelled?
- Have the tenants established that the landlord should be ordered to allow access to or from the rental unit for the tenants or the tenants' guests?
- Have the tenants established that the tenants should be permitted to assign or sublet because the landlord's permission has been unreasonably withheld?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on March 7, 2014 and the tenants still reside in the rental unit. Rent in the amount of \$1,000.00 per month is payable in advance on the 1<sup>st</sup> day of each month. No written tenancy agreement exists and the tenants have not paid the landlord a security deposit or a pet damage deposit.

The landlord's agent further testified that the tenants are in arrears of rent \$300.00 for the month of December, 2015, having only paid \$700.00, as well as \$300.00 for the month of January, 2015, having only paid \$700.00, and no rent has been paid for February, leaving a balance total of \$1,600.00. The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a copy has been provided for this hearing. The notice is dated January 23, 2015 and contains an expected date of vacancy of February 2, 2015 for unpaid rent in the amount of \$600.00 that was due on January 1, 2015. The notice was personally served to one of the tenants on January 23, 2015 by the landlord, and a Proof of Service document has been provided which is signed by the landlord.

The landlord's agent further testified that the tenants were also served with a 1 Month Notice to End Tenancy for Cause personally on January 23, 2015. A copy of that notice has been provided and it is dated January 23, 2015 and contains an expected date of vacancy of February 23, 2015. The reasons for issuing the notice are:

- Tenant is repeatedly late paying rent;
- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant has engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

With respect to repeated late rent, the landlord's agent stated that the tenants have been late with, and still have not paid rent for the months of December, 2014 and January and February, 2015.

With respect to an unreasonable number of occupants in the rental unit, the landlord's agent testified that other tenants have complained about the comings and goings of unauthorized occupants and noise from the rental unit.

The landlord's witness testified that she is the daughter of the landlord and both notices to end the tenancy were served by the landlord's spouse, who signed the Proof of Service documents.

The witness also testified that one of the tenants always pays rent in cash to the landlord's spouse, but the landlord has not issued receipts.

The rental unit is rented to 2 people, and usually there are more than 7 or 10 people in the rental unit at one time. The other tenants have complained saying that there's always a lot of noise, but they have never put their concerns in writing. The rental unit is a basement suite and other tenants reside in the upper unit. The witness was at the rental unit on January 22, 2015 and witnessed many people coming out of the rental unit and the police were there. The witness' mother was called by another person who said there were a lot of police at the rental unit. When the witness arrived, the police would not allow the witness to go near other people there.

The witness also smelled marihuana.

The tenant testified that rent is \$1,000.00 per month and she keeps demanding receipts for rent but the landlord always says that he doesn't know what the tenant is talking about.

The tenant also testified that the rental unit is a garage converted to a 2-room suite. The landlord made a deal with the man living in the other room and he pays \$300.00 per month and the tenants pay \$700.00 per month.

The tenant also testified that the landlord was at the rental unit on January 22, 2015 screaming and intimidating the tenants trying to kick everyone out so someone called the police. The tenant was not at home but the tenant's spouse called, who talked to the landlord asking him to calm down but he kept screaming.

The tenant also testified that friends come and go, but the tenant is at work.

In rebuttal, the witness testified that no arrangement has been made with the other tenant.

### Analysis

In this matter, the tenants have applied for an order cancelling a notice to end tenancy for cause, but have not applied for an order cancelling a notice to end tenancy for unpaid rent. The tenant did not deny that rent is owed, but raised a defense stating that the landlord had an agreement with another tenant for a portion. The landlord's witness denies that and testified that the tenant always pays the rent directly to the landlord's spouse in cash. The parties agree that rent is \$1,000.00 per month and I accept that. The tenants have not paid the rent and have not disputed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and therefore I find that the tenants are conclusively presumed to have accepted the end of the tenancy. I have reviewed the

notice and I find that it is in the approved form and contains information required by the *Act*, and I find that the landlord is entitled to an Order of Possession.

Since the tenancy is ending, I dismiss the tenants' applications for an order cancelling a notice to end tenancy for cause, and for an order allowing access to the rental unit for the tenants or the tenants' guests. The tenant raised no evidence with respect to the application for an order allowing the tenants to assign or sublet, and I dismiss that portion of the tenants' application without leave to reapply.

With respect to the landlord's application for a monetary order for unpaid rent, I am satisfied that the landlord has established a monetary claim in the amount of \$1,600.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,650.00.

These orders are final and binding and may be enforced.

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 20, 2015

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Residential Tenancy Branch

