



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes:      OPR, MNR, FF (Landlord's Application)  
                                 CNC, CNR, MNDC (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 the Landlord and the Tenants.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee. The Tenants applied to cancel a notice to end tenancy for unpaid rent and for cause, and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act").

The Landlord appeared for the hearing with his wife who acted as the Landlord's agent and provided affirmed testimony during the hearing. One of the Tenants appeared for the hearing and also provided affirmed testimony.

Both parties also provided documentary evidence prior to the hearing which the parties confirmed receipt of. No issues were raised in relation to the service of the parties' Applications in accordance with the Act.

At the outset of the hearing, I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process. However, each declined and acknowledged that they understood how the conference call would proceed.

During the hearing, each party was given a full opportunity to present their evidence, respond to each other's testimony, and make submissions to me. While I have carefully considered all of the evidence, only a summary of the evidence is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession and a Monetary Order for unpaid rent?
- Are the Tenant entitled to cancel the notice to end tenancy for unpaid rent and cause?
- Are the Tenants entitled to lost income due to a breach of an agreement?

Background and Evidence

The parties agreed that this tenancy started on September 1, 2014; however, the Tenants were allowed to move in earlier approximately two weeks before the tenancy started.

A written tenancy agreement was signed for a fixed term period of one year due to end on August 31, 2015, after which time the tenancy is intended to continue on a month to month basis. Rent under the agreement was established in the amount of \$1,400.00 payable by the Tenants on the first day of each month. No security deposit was requested from the Tenants.

The Landlord's wife testified that she had deposited the Tenant's postdated rent cheque on January 1, 2015. However, the Tenants informed her the next day that their rent cheque was not going to be honored and as a result, sent the Landlord \$800.00 by e-mail transfer. The Tenants then sent another e-mail transfer to the Landlord on January 15, 2015 in the amount of \$270.00. This left an outstanding balance of \$330.00 for January 2015 rent.

The Landlord's wife explained that the Tenants were habitually late paying rent during the tenancy but they decided to give the Tenants an opportunity to pay the full rent. However, no payment for the rental arrears of January 2015 was made.

The Landlord's wife testified that on February 1, 2015, the Tenants postdated rent cheque for \$1,400.00 was honored and they applied this amount to the rental arrears for January 2015. This still left a balance outstanding for February 2015 rent in the amount of \$330.00.

As a result, the Landlord personally served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on February 7, 2015. The Notice, which was provided in written evidence, has a vacancy date of February 17, 2015 due

to unpaid rent in the amount of \$330.00. The Landlord's wife testified that this amount still remains unpaid and as a result, the Landlord now seeks an Order of Possession to end the tenancy.

The Landlord's wife testified that they have not cashed the Tenant's rent cheque for March 2015 because the Landlord does not want to re-instate the tenancy. However, the Landlord also seeks the rental arrears for February 2015 rent (\$330.00) and lost rent for March 2015 (\$1,400.00) because the Tenants are still occupying the rental suite.

The Tenant explained that she had sent the Landlord an e-mail on December 28, 2014 informing the Landlord that they could not make rent for January 2015. The Tenant acknowledged that she had personally received the Notice on February 7, 2015. The Tenant also confirmed that they were in rental arrears in the amount of \$330.00 and the Landlord had not cashed their rent cheque for March 2015.

The Tenant testified that they do not have the money to pay rent. The Tenant submitted the Landlord was putting the property on the market for sale when they had a fixed term tenancy which is the reason why the Landlord seeks to end the tenancy.

The Tenant was asked about their monetary claim for compensation from the Landlord. The Tenant explained that the Landlord had given them permission to put up a partition wall in the garage so that the other tenant (the "Co-Tenant") could heat a smaller area in order to conduct his woodworking business. The Tenant testified that the Landlord revoked this permission and as a result, the Co-Tenant lost income as a result of not being able to do his woodwork projects and fill work orders.

The Tenant was asked about the nature of the partition wall she wanted to put in the garage. The Tenant explained that this partition was made out of plastic and wooden posts which would allow a smaller area to be created and more efficiently heated.

When the Tenant was asked whether this was intended to be attached to the walls of the garage, the Tenant explained that it was not going to be attached in any place to the building structure. When the Tenant was asked about what the \$2,500.00 claim against the Landlord comprised of, the Tenant explained that it was due to lost income for projects and orders the Co-Tenant was not able to complete. However, the Tenant provided no supporting evidence or invoices of these lost orders and projects.

The Landlord's wife argued that at no time did they give the Tenant permission to put up a partition wall in the garage because this would have resulted in damage to the

structure. The Landlord's wife testified that they were asked by the Tenants if they could put up a wall in the garage and informed the Tenants they would think about this. However, after careful consideration the Landlord decided that he did not want a wall constructed in the garage. The Landlord's wife referred to the Tenant's text message evidence which shows that the Landlord specifically informed the Tenants that they were not to put up any more walls or do any more construction other than what they had already agreed upon.

The Landlord's wife explained that at the start of the tenancy, the Landlord and Tenants had agreed on a list of work that was to be done by the Tenants in lieu of the first month's rent. The Landlord's wife pointed to the addendum to the tenancy agreement which lists the exact repairs the Tenants were authorized to do; none of these included the addition of a partition wall in the garage.

### Analysis

I first turn my mind to the Landlord's Application for an Order of Possession. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act, unless the tenant has a right to withhold or deduct rent.

Section 46(4) of the Act explains that on receiving a Notice under this section, a tenant may dispute the Notice by making an Application or pay the outstanding rent owed on the Notice within five days after which point it will have no effect.

I find that the contents of the Notice complied with Section 52 of the Act and I accept the undisputed evidence that the Notice was personally served to the Tenant in accordance with Section 88(a) of the Act on February 7, 2015.

While the Tenants did make an Application to dispute the Notice, I find the Tenants failed to provide sufficient evidence that they had authority under the Act to not pay the outstanding rent. The Tenant acknowledged that there is \$330.00 outstanding for this tenancy which was not paid on January 1, 2014 and was applied to February 2015 rent by the Landlord.

Therefore, as the Tenants had breached the Act by not paying rent, I find the Landlord is entitled to an Order of Possession. As the Landlord has not accepted any rent for March 2015 and the effective vacancy date of the Notice has now passed, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant.

I also find that the Landlord is entitled to a Monetary Order for unpaid rent relating to the rental arrears and March 2015 rent. This is because by the time the Landlord enforces the Order of Possession, the Landlord will have lost rent for March 2015. Therefore, the amount awarded to the Landlord is **\$1,730.00**.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the **\$50.00** filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$1,780.00**.

As the tenancy has now ended because the Tenants failed to pay rent, the Tenants' Application to cancel the notice to end tenancy for unpaid rent is dismissed. As the tenancy had ended under the provisions of the notice to end tenancy for **unpaid rent**, the Tenant's Application to cancel the notice to end tenancy for **cause** is now a moot issue. Therefore, this portion of the Tenants' Application is also dismissed.

I also dismiss the Tenant's Application for monetary compensation. This is based on two reasons. Firstly, the Tenant failed to provide sufficient evidence to show that the Landlord had given any express or implied permission for the Tenants to erect a partition wall in the garage. The evidence provided by the parties only indicates that the Landlord **considered** this request from the Tenant.

However, I find the Landlord provided clear instructions that the Tenants were not permitted to install the wall. Therefore, I find that the Landlord should not be held responsible for any losses incurred by the Tenants for denying this permission as it had not been agreed as a condition of entering into the tenancy. Secondly, I find the Tenants failed to provide sufficient evidence to verify the losses being claimed for the Tenant's lost income in the form of work orders/invoices that could not be completed.

It is important for the Tenants to note that a Landlord at any time during a tenancy may put the rental unit on the property market. If the property sells and the new owners require vacant possession of the suite, a fixed term tenancy still needs to be honored before this can take place.

### Conclusion

The Tenants have breached the Act by not paying rent. Therefore, the Landlord is granted an Order of Possession effective **two days after service on the Tenants**. This order may then be enforced in the Supreme Court as an order of that court if the Tenants fail to vacate the rental unit.

The Landlord is also granted an Order of Possession for unpaid rent in the amount of **\$1,780.00**, pursuant to Section 67 of the Act. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make the payment in accordance with the Landlord's instructions.

Copies of the above orders are attached to the Landlord's copy of this decision.

The Tenants have not been able to cancel the notices to end tenancy and have not proved their monetary claim. Therefore, the Tenants' Application is dismissed **without** leave to re-apply.

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: March 10, 2015

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Residential Tenancy Branch

