



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF  
                              CNR, OLC, RR

### Introduction

This hearing was convened by way of conference call concerning applications made by a landlord and by a tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities, 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 tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The parties appeared, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. The tenant also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

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

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Should the notice to end the tenancy given by the landlord be cancelled?
- Has the landlord established a monetary claim for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on June 1, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$1,150.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$575.00 which is still held in trust by the landlord and no pet damage deposit was collected.

The landlord has provided a copy of a tenancy agreement between the landlord, a second landlord and the tenant dated June 1, 2014. It shows a spelling of the tenant's surname on the first page of the agreement, which is different from the spelling of the tenant's name on the signature page. The landlord testified that the tenant printed his name on both pages, and could not provide any testimony of how the spelling of the names would differ.

The landlord further testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities personally on March 2, 2015, a copy of which has been provided. The notice is dated March 2, 2015 with an effective date of vacancy of March 12, 2015. The reason for issuing the notice states the tenant failed to pay rent in an amount that has been crossed off and another amount of \$3,450.00 has been added and an initial appears above that, which was due on March 1, 2015. The landlord testified that the tenant was in arrears of rent for January, February and March, 2015. The tenant paid \$400.00 on December 7, 2014 and \$700.00 on January 16, 2015 in cash, but the landlord didn't give any receipts for those payments to the tenant. Both of those payments were for December's rent and nothing has been paid since. Further, the tenant hasn't paid any rent for this month.

The landlord further testified that the tenant has never asked the landlord to reduce the rent.

The tenant moved out of the rental unit and back in, and during the time he was away another fellow was there. In January, 2015 the fellow told the landlord and the landlord's spouse that he would be paying the rent, but didn't. The landlord contacted the police, but doesn't recall when, who advised that the landlord should be dealing with the Residential Tenancy Branch, but if the person agreed to move out, they would attend to keep the peace if required. Nothing was received in February for rent, and the landlord asked the fellow to move out but he refused. When asked that if there was no tenancy agreement with the fellow, why the landlords didn't issue a notice to end the tenancy sooner, the landlord responded that the landlords didn't know the fellow's name or whose name to write on a notice to end the tenancy. Further, the landlords trusted

the tenant in the past, and because the fellow was a friend of the tenant, they trusted he would pay the rent.

The landlord currently has 6 rental units.

The landlord seeks an Order of Possession, a monetary order for \$3,450.00 in unpaid rent, and an order permitting the landlord to keep the security deposit in partial satisfaction of the claim.

**The tenant** testified that the tenancy agreement provided by the landlord as evidence for this hearing is not the tenancy agreement that the tenant signed. Originally, the tenant dealt with the landlord's spouse (hereafter referred to as "the other landlord"), who is also named in the tenancy agreement as a landlord. The tenant asked him for a copy of the tenancy agreement but never received it. The tenant had printed his name and the name of his girlfriend on page 1 and had the girlfriend sign it, then met with the other landlord and signed it in front of him. The one provided for this hearing does not contain the girlfriend's name. She moved out during the tenancy but no new tenancy agreement was prepared. Also, the parties had agreed that rent would be \$1,200.00 per month with a \$100.00 per month reduction for the tenant doing the yard work, and the agreement that the tenant and his girlfriend signed showed that rent was \$1,100.00 per month.

In June, 2014 the tenant paid \$250.00 toward the security deposit and paid the other \$300.00 in August after the landlord had asked for it. In July, 2014 the tenant asked the landlord to provide receipts for June and July's rent and the landlord agreed to drop them off in the mailbox. The tenant paid rent in September and again asked for receipts and the tenancy agreement, but none were provided.

On February 23, 2015 the tenant spoke to the other landlord on the phone who said he'd be at the rental unit on the 27<sup>th</sup> to deal with repairs, which is when the tenant paid \$1,050.00 for March rent, but was short \$50.00 for the full amount of \$1,100.00.

The tenant further testified that in November, 2014 mold started to build up in the master bedroom of the rental unit which seriously affected the tenant's breathing. On or about November 3, 2014 the tenant spoke to the other landlord who said he would have someone look at it, but by the 26<sup>th</sup> of the month the tenant still hadn't heard anything. The tenant moved out of that bedroom and sealed the door with plastic bags. Around November 30, 2014 the tenant served the landlord with a letter asking him to remove the mold by December 1, 2014 and the tenant continued to pay rent. On December 14, or 15, 2014 the other landlord and another fellow arrived at the rental unit and looked at the mold areas shown by the tenant. Because of a leaky water pipe, there was also

mold in the bathroom. The tenant cut a little corner near the tub and the landlord said he would take care of it. The master bedroom is still infested with mold and the tenant has had to keep it separated from the rest of the house. It's a 2 bedroom house and difficult to get a roommate when the main bedroom isn't accessible and hasn't been since November, 2014. The tenant seeks rent reduction for loss of use of the master bedroom and has provided 3 photographs.

The tenant also testified that he has been asking since August, 2014 for receipts for rent. On February 27, 2015 the tenant paid \$1,050.00 to the other landlord. About a week later he returned and told the tenant he had only paid \$750.00. The tenant denies that and testified that he has been paying on the 1<sup>st</sup> day of each month until April, 2015. The tenant was in arrears the sum of \$50.00 for March, 2015 and currently owes for April as well, but nothing more.

The tenant seeks an order cancelling the notice to end the tenancy, an order reducing rent for loss of use of the master bedroom in no specific amount, and an order that the landlord comply with the *Act* by providing receipts for rent paid in cash.

**The tenant's witness** testified that he is the roommate of the tenant and has been since November 1, 2014. The witness was present on November 26, 2014 when the tenant gave a letter to the landlord regarding mold in the rental unit, and the landlord said that repairs would be done by December 1, 2014. The landlord returned on December 15, 2014 and told the tenant that the mold issue would be taken care of "as soon as possible," but nothing has been done to date.

The witness also testified that rent has always been paid on time, and despite his requests and the tenant's requests for receipts, none have been provided. The witness personally paid rent for March, 2015 on February 27, 2015 by handing it directly to the other landlord. The landlord refused to give a receipt saying that the tenant was short \$50.00 and when it was paid in full, the receipt would be issued.

The witness denies being asked by the landlord to move out, or that the tenant ever moved out and back in again; the witness would not be able to pay rent in full on his own.

### Analysis

Where a tenant disputes a notice to end a tenancy issued by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains most information required by the *Act*,

however the section showing the address of the rental unit under the Notice section to the tenant, has been left blank.

The landlord testified that the tenant was short \$50.00 for December's rent and failed to pay any rent for January through March. My arithmetic shows that to be \$3,500.00 if rent is \$1,150.00 per month. But the notice has been changed from one amount which is unreadable, to another amount which reads \$3,450.00.

The landlord testified that rent in the amount of \$1,150.00 per month is payable under the tenancy agreement and has provided a copy. The tenant testified that the parties had agreed to \$1,200.00 per month with a \$100.00 reduction in exchange for the tenant doing the yard work and that the tenancy agreement he signed had 2 tenants named on it. He also testified that the agreement showed that rent was \$1,100.00 per month.

Both parties testified that the tenant printed his name on the first page and the last page of the tenancy agreement, and I seriously question how or why a tenant would print his name incorrectly on such a document on one page at the commencement of a tenancy. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is issued to a tenant spelled the same way it appears on page 1 of the tenancy agreement, not the same way it is printed on the signature page. I also note that it appears that a second tenant's name has been removed from the first page by erasing or white-out, but neither party was able to explain that. I am satisfied that the signature of the tenant on the last page of the tenancy agreement is the same initial of the tenant on the Tenant's Application for Dispute Resolution and therefore I find that the signature page of the tenancy agreement contains the correct spelling of the tenant's name. However I am not satisfied that the first page of the tenancy agreement provided by the landlord was written by the tenant or that the agreement provided can be relied upon other than the signature page. Also, the tenant testified that the landlord did not provide the tenant with a copy of the agreement that the tenant signed at the commencement of the tenancy which is not disputed by the landlord and is contrary to the *Act*.

Having found that the tenancy agreement cannot be relied upon, I also find that the landlord has failed to establish that rent in the amount of \$1,150.00 per month was agreed upon, and I find that rent is in fact \$1,100.00 per month and the tenant is responsible for yard work.

Having found that the notice is incorrect on its face with respect to the address to vacate from and the amount of rent due, and the proper name of the tenant, I am not satisfied that the landlord is entitled under the *Act* to an Order of Possession, and the notice to end the tenancy is cancelled.

Further, the *Residential Tenancy Act* states that a landlord must give a receipt for all money received by a tenant if it is paid in cash. That does not mean that a landlord can withhold a receipt if rent hasn't been paid in full. In that situation, the landlord's responsibility is to issue a receipt for the exact amount received. The tenant and the tenant's witness testified that they have been asking the landlords for receipts and a copy of the tenancy agreement since June, 2014 and none have been provided. The landlord has not provided any evidence of any receipts, or of payments made by the tenant or the tenant's roommate, nor are there any ledgers or records to determine how the landlords have kept track. The landlords currently have 6 rental units, and keeping accurate records is crucial to any business, and certainly to the proof of any monetary claims in a dispute.

The tenant does not dispute that the landlord is owed money, specifically \$50.00 for March's rent and \$1,100.00 for April. The *Residential Tenancy Act* states that a tenant must pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement. I hereby grant a monetary order in favour of the landlord for unpaid rent for the months of March and April, 2015 in the amount of \$1,150.00.

With respect to the tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided, I have considered the testimony of the tenant and the tenant's witness, as well as the landlord's testimony that the tenant never asked for a reduction in rent. Perhaps the tenant didn't ask the landlords for a reduction in rent, but the tenant did ask the landlord to repair the problem. The tenant has provided photographs, and I accept the undisputed testimony that the other landlord promised repairs but never provided them, and the undisputed testimony of the tenant that a portion of the rental unit is unusable due to the mold. The law requires a landlord to provide and maintain residential premises in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant. In the circumstances, I find that rent should be reduced by \$100.00 per month from November, 2014 to date, or \$600.00 including this month.

I further order the landlord to repair the rental unit in such a state that the mold is remediated and the bedroom and bathroom are suitable for occupation. I further order that rent be reduced by a further \$100.00 per month commencing with May, 2015 and until the mold issue has been remediated and the bedroom and bathroom are suitable for occupation by the tenant.

I further order the landlords to issue receipts for all payments made in cash by the tenant or the tenant's roommates at the time the payment is given to the landlords.

Having found that the landlord is entitled to \$1,150.00 for unpaid rent and the tenant is entitled to \$600.00 for loss of use of a portion of the rental unit, I find it prudent to set off the amounts, and I grant a monetary order in favour of the landlord for the difference in the amount of \$550.00.

Since the tenancy is not ending, I decline to order the landlord to keep the security deposit, and I dismiss that portion of the landlord's application with leave to reapply.

Since both parties have been partially successful, I decline to order that either party recover the filing fee.

In summary:

- I find that rent in the amount of \$1,100.00 per month is payable on the 1<sup>st</sup> day of each month;
- I order the landlords to make repairs to the rental unit as described above;
- Rent is reduced by \$100.00 per month until repairs are made and the tenant has full use of the rental unit;
- I order the landlords to issue receipts for all payments made in cash at the time the payment is given;
- The landlord's application for an Order of Possession is dismissed, the notice to end the tenancy is cancelled, and the tenancy continues;
- The parties are each granted a monetary award which is set-off, and the landlord will have a monetary order for the difference in the amount of \$550.00;
- The landlord's application for an order permitting the landlord to keep the security deposit is dismissed with leave to reapply;
- Neither party will recover the filing fee.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$550.00, which includes full payment of rent to April 30, 2015.

I hereby order the landlord to make repairs to the rental unit by rectifying the mold issue and making the rental unit usable by the tenant.

I further order that the monthly rent of \$1,100.00 is payable on the 1<sup>st</sup> day of each month.

I further order that rent be reduced by \$100.00 per month until the repairs are made.

I further order the landlord to comply with the *Residential Tenancy Act* by issuing receipts for payments made in cash at the time the payments are given.

The landlord's application for an Order of Possession is hereby dismissed; the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 2, 2015 is hereby cancelled, and the tenancy continues.

The landlord's application for an order permitting the landlord to keep all or part of the security deposit is hereby dismissed with leave to reapply.

This order is 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: April 21, 2015

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Residential Tenancy Branch



