



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNR, MNR, MNDC, OPT, AAT, LAT, AS, RR

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by both of the tenants, the landlord and his wife.

At the outset of the hearing the parties acknowledged the tenants were no longer living in the rental unit, as such there was no longer a need to dispute the 10 Day Notice to End Tenancy for Unpaid Rent. I amended the tenant's Application to exclude this matter. However, I note that whether or not the Notice was a valid Notice was relevant to the issue of possession of the rental unit and as such, I heard testimony in relation to the Notice and the payment of rent from both parties.

In relation to the tenant's monetary claim I clarified with the tenants that they had not indicated an amount for the claim. They stated that they had not been able to get all of their estimates together prior to the hearing and as such were not prepared to proceed with that matter. I allowed the tenants to withdraw this part of their Application and they remain at liberty to file a financial claim at a future date.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order of possession; an order allowing access to the rental unit for the tenants and their guests; authorizing the tenants to change the locks on the rental unit; allowing the tenant to assign or sublet the rental unit; and allowing the tenant to reduce rent for repairs requested and not provided, pursuant to Sections 30, 34, 54, 65, 67, 70, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenants submit the tenancy began in October 2013 as a month to month tenancy for a monthly rent of \$1,000.00 plus 30% of the medical marijuana crop that the female tenant's previous partner was licensed for due on the 1<sup>st</sup> of each month.

The tenants submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on March 11, 2015 with no effective date provided, citing the tenants had failed to pay rent in the amount of \$1,720.00. The tenants submitted their Application for Dispute Resolution on March 18, 2015. The tenant acknowledged that she had received the 10 Day Notice on March 11, 2015.

The female tenant explained that she had not paid rent because her former roommate moved out unexpectedly and she could not cover the cost. The tenants also explained that they tried to pay the landlord the outstanding rent after the male tenant obtained written confirmation from the landlord that he would be moving in to the rental unit. The tenants submit the landlord later rescinded the agreement to allow the male tenant move in and would not accept any rent payments from the tenants.

The tenants submit that they had not wanted to move out and that is why they had filed their Application to dispute the notice, however they state that on the date that they served the landlord with their hearing package (March 24, 2015) the landlord's wife assaulted the female tenant by pulling her hair and "attacked" the male roommate's car with a flashlight.

The female tenant submits that she started moving her belongings out just after this event and then after the landlords repeatedly attended the residential property daily the tenants decided to move out of the rental unit on April 11, 2015. However, the tenants would like to move back into the rental unit.

The landlord and his wife dispute the tenants' claim that either one of them assaulted the female tenant or attacked the male tenant's car.

The tenants also submit that landlord has failed to replace locks on the access doors to the rental unit; repair the furnace and ventilation systems; repair doors and windows; or remediate a mould problem. The tenants have provided no documentary evidence to support their position that these items need repair or that they requested the landlord make these repairs.

### Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

While I noted above that the tenants were no longer disputing the 10 Day Notice to End Tenancy for Unpaid Rent I find that issues surrounding this Notice are relevant to determine whether or not the tenants are entitled to an order of possession.

From the testimony of the female tenant I accept that she received the 10 Day Notice to End Tenancy for Unpaid Rent on March 11, 2015. As such, the tenants were allowed 5 days to either pay the rent in full or file an Application for Dispute Resolution to dispute the Notice.

As noted above, the tenants submitted their Application for Dispute Resolution on March 18, 2015 or 7 days after the Notice was received. As such, pursuant to Section 46(5) the tenants are conclusively presumed to have accepted the end of the tenancy and required to vacate the rental unit within 10 days of receipt of the Notice.

As such, I find the tenants did not have authority to remain in the rental unit for the period of time after the effective date of the 10 Day Notice.

When two parties provide verbal testimony that provides two or more equally plausible accounts of events, the party making a claim of wrongdoing has the burden of providing additional evidence to support their claim.

In relation to the claims that the landlord's wife assaulted the female tenant and attacked the male tenant's car I find the tenants have provided no documentary or other evidence to corroborate their claim. As a result I find the tenants have failed to provide sufficient evidence that the landlord has caused the tenants any harm or reason to fear them.

As I have determined that the tenant's did not have legal authority to possess the rental unit and that they have failed to provide sufficient evidence that the landlord or his wife have caused them physical harm or caused the tenants to be threatened in any way, I find the tenants are not entitled to an order of possession.

As I have determined the tenants are not entitled to possession of the rental unit and the tenancy has ended I find that all other matters in the tenant's Application are moot.

### Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety.

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 29, 2015

---

Residential Tenancy Branch

