



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenant's Application: CNR

Landlord's Application: OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross applications. The tenants filed to dispute a Notice to End Tenancy dated March 19, 2015 indicating the landlord sought to end the tenancy for unpaid rent and cause. The landlord applied for an Order of Possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent dated April 7, 2015; and, a Monetary Order for unpaid rent and/or loss of rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

In filing their respective Applications, I noted that the parties provided two different versions of a Notice to End Tenancy into evidence. The Notice to End Tenancy dated March 19, 2015 that was provided by the tenants is an older version that is no longer the approved form and it indicates two reasons for ending the tenancy, unpaid rent and cause, which fall under two different sections of the Act. The Notice to End Tenancy provided by the landlord is the current approved form for ending a tenancy for unpaid rent or utilities only. I heard from the landlord that the second Notice to End Tenancy was issued to replace the older one that is no longer effective. In keeping with procedural fairness, I amended the tenants' application to indicate they were disputing the 10 Day Notice issued on April 7, 2015 and I withdrew their request to cancel a Notice to End Tenancy for cause since I considered the original Notice to End Tenancy withdrawn.

During the hearing, the landlord requested his application be amended to seek authorization to retain the security deposit in partial satisfaction of the unpaid rent. Since this request reduces any Monetary Order issued to the landlord I found the request non-prejudicial to the tenants and I permitted the amendment.

#### Issue(s) to be Decided

1. Is there a basis to cancel the 10 Day Notice to End Tenancy for Unpaid Rent?
2. Is the landlord entitled to an Order of Possession for unpaid rent?
3. Is the landlord entitled a Monetary Order for unpaid and/or loss of rent?
4. Is the landlord authorized to retain the security deposit?

#### Background and Evidence

The tenancy started in July 2014 and the tenants paid a security deposit of \$200.00. The tenants are required to pay rent of \$800.00 on the 1<sup>st</sup> day of every month for their two bedroom basement suite.

On March 19, 2015 the landlord served the tenants with an older version of a Notice to End Tenancy indicating the tenants failed to pay rent of \$1,600.00 as of March 1, 2015 and were repeatedly late paying rent. The tenants filed to dispute that Notice on the basis the tenants did not have the funds to pay the rent due to a workplace accident by the male tenant and because of the “illegal suit[e] next door”. On April 7, 2015 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent indicating rent of \$2,400.00 was outstanding as of April 1, 2014 and stated effective date of April 17, 2015. As previously indicated in this decision, the Notice to End Tenancy dated March 19, 2015 has been withdrawn and replaced with the Notice issued April 7, 2015. I have considered the tenants’ reasons for disputing the first Notice to End Tenancy as their basis for disputing the 10 Day Notice.

The tenants acknowledged being in rental arrears in the past which were paid by way of a lump sum payment of \$2,600.00 earlier this year and they currently owe the landlord rent for recent months. The tenants submitted that the \$2,600.00 was paid to the landlord in late February 2015 for rent for December 2014, January 2015 and ½ of February 2015 rent. The landlord submitted that \$2,600.00 was paid by the tenant at the end of January 2015 for rental arrears owed up to and including January 2015t but that no rent was received for February 2015 onwards. The tenant acknowledged that he did not keep very good records as to dates payments were made and that he did not deny that \$2,400.00 in rent has not been paid to the landlord for February through April 2015..

The tenant submitted that in March 2015 he offered \$1,300.00 to the landlord to be applied toward the \$1,600.00 they owed at that time but the landlord refused the money. The tenants suspect that the reason the landlord wants to evict them is because he wants to increase the size of the basement suite to a three bedroom so as to comply with by-laws but also charge more rent for their unit.

The landlord acknowledged that \$1,300.00 was offered at the end of March 2015 but that it was rejected because the landlord wanted the full amount owed and because the tenant asked for a few more weeks to pay the balance which was unacceptable to the landlord. The landlord submitted that by-law issues have been resolved because the illegal suite has been vacated and the landlord denied approaching the tenants to seek more rent from them.

### Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides for very limited circumstances when a tenant may legally withhold rent. A legal basis to withhold rent includes: overpaid rent, overpaid security deposit; emergency repairs made by a tenant, or prior authorization by an Arbitrator or the landlord.

When a tenant receives a 10 Day Notice to End Tenancy for Unpaid Rent, the tenant has five days to pay the full amount of rent that is due to nullify the Notice or file to dispute the Notice. In this case, the tenants attempted to pay a portion of the rent that was due to the landlord at the end of March 2015 but even if the landlord accepted the partial payment it would not nullify the Notice. Where a tenant disputes a 10 Day Notice the tenant must be prepared to demonstrate that rent was paid, in full, or that the tenant had a legal right to withhold rent.

In this case, the tenants conceded that all of the rent that was due to the landlord was not paid. Nor, did the tenants present any evidence to suggest they had a legal basis for withholding rent. Therefore, I dismiss their request to cancel the 10 Day Notice dated April 7, 2015.

Upon review of the 10 Day Notice submitted as evidence by the landlord and considering the facts of this case, I find the 10 Day Notice dated April 7, 2015 to be in the approved form and enforceable. Therefore, I grant the landlord's request for an

Order of Possession based upon that Notice. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenants.

I find I prefer the landlord's evidence that the full amount of rent is owed for the month of February 2015 as the tenants had not indicated otherwise in filing their Application and the tenant conceded that he did not keep good records as to days payments were made. Therefore, I find the landlord entitled to recover unpaid rent in the amount of \$2,400.00 for the months of February, March and April 2015 as requested.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Rent: February 2015 – April 2015	\$ 2,400.00
Filing fee	50.00
Less: security deposit	<u>(200.00)</u>
Monetary Order	\$ 2,250.00

The landlord must serve the Monetary Order upon the tenants and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The tenants' Application has been dismissed.

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$2,250.00 to serve and enforce as necessary.

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 30, 2015

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Residential Tenancy Branch

