



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – CNR

For the landlord – OPR, MNR

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel a Notice to End Tenancy for unpaid rent. The landlord applied for an Order of Possession for unpaid rent or utilities and for a Monetary Order for unpaid rent or utilities.

The tenants and the landlord and the landlord's agent attended the conference call hearing although the landlord did not take part in the hearing. The tenants and the landlord's agent gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Preliminary Issues

The landlord has entered a last name for the female tenant which is not the female tenant's legal name. The parties did not raise any objections to the female's tenant's last name being corrected and the decision reflects this correction.

Issue(s) to be Decided

- Are the tenants entitled to an Order to cancel the 10 Day Notice to End Tenancy?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties agreed that this month to month tenancy started on January 01, 2012. DM testified that rent for this unit started at \$665.00 per month and has increased by mutual consent to \$750.00 per month in March, 2014. The tenants paid a security deposit of \$332.50 on January 12, 2012 and a pet deposit of \$350.00 on January 01, 2013. The landlord's agent testified that the landlord passed away in March 2014 and the new landlord is the executor of his brother's estate. The landlord's agent testified that it appears that the rent was increased to \$800.00 in September, 2014.

The landlord's agent testified that the tenants have failed to pay rent for March and April, 2015. A 10 Day Notice to End Tenancy for unpaid rent (the Notice) was served upon the tenants on April 01, 2015 in person. A copy of the Notice has been provided in documentary evidence by both parties. The Notice states that rent of \$800.00 is outstanding that was due on April 01, 2015. The tenants had five days to either pay the outstanding rent or file to dispute the Notice or the tenancy will end on April 10, 2015.

The landlord's agent testified that no rent has been paid and the landlord seeks an Order of Possession and a Monetary Order for \$1,600.00.

DM testified on behalf of both tenants. DM testified that the rent originally started at \$665.00 as shown on the rent receipts provided in documentary evidence. The landlord at the time passed away and his family member took over as the landlord. This relationship continued and the tenants agreed to a rent increase of \$45.00 in April,

2013. This took the rent to \$700.00. In March, 2014 the tenants agreed to another rent increase of \$50.00 which took the rent to \$750.00.

DM testified that they also had an arrangement with the previous landlord to pay their rent biweekly. This arrangement is shown on the rent receipts provided. DM testified that they were going on vacation in June, 2015 so arranged with the previous landlord to pay extra rent of \$50.00 or more per month to cover the rent when they were on vacation. The tenants paid extra rent from September, 2014 as shown on the rent receipts. The rent was not increased to \$800.00 in September, 2014 the extra amounts were a credit towards future rent.

DM referred to the rent receipts provided in documentary evidence. Some receipts had multiple payments recorded on them. DM testified that in December, 2014 they had paid \$1,020.00 leaving a credit of \$270.00. In January, 2015 they paid \$1,400.00 leaving a credit of \$650.00. In February they paid \$510.00 and used some of their credit towards the balance of rent. This left a total credit of \$680.00. In March, 2015 they paid \$1,050.00 and in April, 2015 they used their credit. This left a credit owed of \$230.00 to apply to rent for May, 2015.

DM testified that when the Notice was served upon the tenants by the new landlord no rent was actually owed as the landlord still held the credit for the tenants. DM testified that in May, 2015 the tenants sent a bank cheque to the new landlord for \$520.00 to cover the rent along with the \$230.00 held in credit. The landlord returned this cheque to the tenants.

DM testified that they were employed to do work by the two previous landlords and also were friends with the landlords. The previous landlords had always had the tenants sign the rent receipts. The tenants seek to have the Notice cancelled.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The landlord has provided little documentary evidence to show that rent is outstanding for March and April, 2015 or that a rent increase of \$50.00 was agreed to in September, 2014. I have reviewed the rent receipts provided by the tenants and I am satisfied that the tenants paid extra rent each month as shown on the rent receipts. This gave the tenants a credit to use towards future rent payments.

The landlord's agent argued that the rent was increased to \$800.00 in September 2014. When rent is increased it may only be increased once in any 12 month period and it is clear from the rent receipts that the rent was already increased by \$50.00 by mutual consent in March, 2014. The landlord may not increase the rent again prior to March, 2015 and must issue the tenants with a legal Notice of rent increase and provide the tenants with three months' notice unless the tenants mutually agree to a rent increase. The most the rent can be increased in 2015 is \$2.5 percent.

It is therefore my decision that in September, 2014 the rent remained at \$750.00 and the tenants had a credit that accumulated from September, 2014 to April, 2015 as documented above. Consequently, at the time the Notice was served upon the tenants there was no outstanding rent and the Notice has no force or effect. I therefore uphold the tenants' application to cancel the Notice.

The landlord's application for an Order of Possession based on unpaid rent is dismissed. As there is no rent outstanding other than rent of \$520.00 for May, 2015 which the landlord refused to accept; the landlord is not entitled to a Monetary Order and this section of the landlord's claim is dismissed.

I further find the tenants had an agreement to pay their rent biweekly with the previous landlord. Where an agreement has been entered onto and a new landlord takes over the unit then the new landlord must continue to honor the agreement and allow the tenants to pay the rent biweekly.

Conclusion

The tenant's application is allowed. The Notice dated April 01, 2015 is cancelled and the tenancy will continue.

The landlord's application is dismissed in its entirety without leave to reapply.

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: May 25, 2015

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Residential Tenancy Branch

