



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPN, MNR, MNSD, MNDC, FF, O,

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and for the tenants' failure to abide by the terms of their tenancy agreement pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. All three tenants who attended the hearing confirmed that they received copies of the landlord's dispute resolution hearing package and written evidence package sent by the landlord by registered mail on May 15, 2015. In accordance with sections 89 and 90 of the *Act*, I find the three tenants who attended this hearing were duly served with these documents. In accordance with section 89(2) and 90 of the *Act*, I find that the remaining respondents were deemed served with the landlord's hearing package and written evidence on May 20, 2015, the fifth day after their registered mailing.

### Preliminary Matters

At the commencement of this hearing, the landlord gave undisputed sworn testimony that he gained vacant possession of this entire rental property on May 31, 2015, by which time all tenants had vacated the rental unit. The landlord withdrew his application for an Order of Possession. The landlord's application for an Order of Possession is hereby withdrawn.

I noted that the landlord's written evidence contained a Residential Tenancy Agreement signed by the landlord and Tenants JND and CCZ on October 19, 2014. Although the landlord attached an October 19, 2014, Addendum in which the remaining five Respondents were added as tenants, only the landlord and Tenants JND, CCZ, LD and EA signed that Addendum. While I will accept that these four tenants (the four tenants) are tenants for the purposes of the Act as a result of their signing this Addendum to the Residential Tenancy Agreement (the Agreement), I find that the remaining three individuals also listed as Respondents in the landlord's amended application for dispute resolution are not tenants, but occupants, and as such the landlord cannot obtain a monetary award from these three individuals. This is because the landlord submitted no document signed by these three individuals which establishes their responsibilities as tenants.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent or loss of rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

The parties in attendance at the hearing agreed that the landlord allowed the tenants to move into this rental unit a few weeks before this tenancy for a rental home was scheduled to commence on November 1, 2014. The original term of this tenancy was scheduled for six months, which was to expire on May 1, 2014. According to the terms of the written tenancy Agreement, the tenancy could continue on a month-to-month basis at the end of the initial fixed term. Overall monthly rent was set at \$2,000.00, payable by the first of each month. According to the terms of the Addendum, this rent was to include \$1,100.00 from the upper level occupants of this home (Tenant JND, and Occupants RD and the two Occupants RJD), and \$900.00 from the remaining three tenants who were to live in the lower level unit. However, the Addendum also noted that the overall monthly rent all signatories to the Addendum committed to be paid to the landlord was a total of \$2,000.00. The landlord continues to hold the \$1,000.00 security deposit for this tenancy, paid on or about November 1, 2014.

By April 2014, some of the tenants were no longer interested in continuing their tenancy. When they informed the landlord of their plan to end the living arrangements for the lower level of this rental home, the landlord advised that the remaining tenants in the upper level could not remain there unless they paid the entire \$2,000.00 agreed to in the original tenancy agreement. Tenant JND and her family refused to end their tenancy and the landlord gave undisputed sworn testimony and written evidence that

they also refused to sign a new tenancy agreement to replace the agreement signed on October 19, 2014.

At the hearing, both parties maintained that the other party tried to end this tenancy. The landlord gave undisputed sworn testimony supported by written evidence that the tenants refused to convert their oral request to end their tenancy into writing. Although he received a text message that the upper level tenants were intending to end their tenancy before May 1, 2015, those tenants in attendance did not dispute the landlord's claim that they did not issue any formal notice to end their tenancy in writing. The tenants testified that the landlord did not issue them any formal notice to end tenancy on Residential Tenancy Branch forms. As the tenants did not sign any new tenancy agreement or addendum with the landlord, this tenancy continued on May 1, 2015 as a periodic (month-to-month) tenancy under the terms of the original fixed term tenancy.

The landlord's application for a monetary award of \$2,900.00 included \$2,000.00 for the landlord's anticipated loss of rent for June 2015, as well as amounts to recover the landlord's costs of sending the tenants copies of his hearing documents and his filing fee.

At the hearing, the landlord testified that he was uncertain until May 31, 2015 as to whether the tenants would actually all be leaving the rental unit by that date. He said that the day after he received vacant possession of the rental unit he began efforts to try to re-rent the premises for June 2015. He gave undisputed sworn testimony that he placed advertisements on two popular rental websites as to the availability of the rental unit, albeit at a higher proposed monthly rental (i.e., \$2,200.00 vs. \$2,000.00). The landlord explained that the Addendum clarified that the \$2,000.00 monthly rental was a "special price" given that both portions of the rental unit were to be rented at that time and for a set fixed term. The landlord gave undisputed sworn testimony that this rental unit remains available for rent. He has had one prospective renter view the premises, and another phone call from a possible tenant.

For their part, the tenants gave undisputed sworn testimony that the landlord did not issue receipts to them when they paid their monthly rent during this tenancy. They also said that the landlord did not provide them with copies of their signed tenancy Agreement or Addendum, despite their asking for these documents a number of times during this tenancy.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. All tenants who sign a residential tenancy agreement remain jointly and severally liable for any obligation they committed to when they entered into an agreement or an addendum to an agreement establishing the terms of a joint tenancy. In this case, I find that all four signatories to the Addendum committed to be jointly liable for any responsibilities they assumed by signing that Addendum to the Agreement.

Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for June 2015, the tenants would have needed to provide their notice to end this tenancy before May 1, 2015. Section 52 of the *Act* requires that a tenant provide this notice in writing.

I find that the tenants were in breach of the month-to-month tenancy agreement that took effect because they did not provide written notice to end this tenancy. Although they were advised by the landlord that he needed their notice to end this tenancy in writing, they did not do so. Therefore, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for June 2015. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In this case, given that the tenants did not actually yield vacant possession of the rental unit until May 31, 2015, and the landlord was uncertain if he would have possession of the whole rental home or just the lower level, I accept that it would have been very difficult for the landlord to successfully re-rent this property to new tenants for June 2015. By almost the middle of June 2015, the landlord remains without a tenant for these premises, and it appears unlikely at this stage that he will be able to recover any rent for June 2015. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for June 2015. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' exposure to his loss of rental for June 2015.

I agree with the tenants' assertion that the landlord should have been issuing rent receipts if the tenants requested these and should also have given them copies of their rental Agreement and Addendum. These concerns do not affect the fundamental failure

of the tenants to notify the landlord in writing of their intention to end their tenancy. There was uncertainty as to whether the whole rental property would be vacated and whether all or only some of the inhabitants would leave before June 1, 2015. As such, I find that the landlord is entitled to a monetary award of \$2,000.00 for his loss of rent for the month of June 2015.

I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of this monetary award. No interest is payable over this period. Since the landlord has been successful in his application, I allow the landlord to recover his \$50.00 filing fee from the tenants. The landlord is not allowed to recover any other costs of preparing for this hearing, including his mailing and copying costs.

### Conclusion

I issue a monetary award in the landlord's favour against the four tenants under the following terms, which allow the landlord to recover unpaid rent and his filing fee and to retain the security deposit:

<b>Item</b>	<b>Amount</b>
Loss of Rent June 2015	\$2,000.00
Less Security Deposit	-1,000.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,050.00</b>

The landlord is provided with these Orders in the above terms and any or all of the four tenants must be served with this Order as soon as possible. Should any or all of the four tenants fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. The landlord's application for an Order of Possession is withdrawn. 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: June 11, 2015

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Residential Tenancy Branch

