



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenants' application: CNC, CNR, OLC, FF

Landlord's application: OPR, OPC, MNR, MNDC, FF

### Introduction

This was the hearing of applications by the tenants and by the landlord. The hearing was conducted by conference call. The landlord attended the hearing and was represented by her son. The tenants attended and they were assisted by a friend who acted as translator

### Issue(s) to be Decided

Should the one month Notice to End Tenancy for cause dated May 4, 2015 be cancelled?

Should the 10 day Notice to End Tenancy for unpaid rent dated May 4, 2015 be cancelled?

Is the landlord entitled to a monetary award for unpaid rent and if so, in what amount?

Should the landlord be ordered to comply with the *Residential Tenancy Act*, Regulation or tenancy agreement?

### Background and Evidence

The rental unit is a three bedroom, two bath basement suite in the landlord's house in Surrey. There are two other suites in the house. The landlord lives in the uppermost suite and the other is rented.

There is no written tenancy agreement. According to the landlord the tenancy began in October 2014. The rent is \$850.00 per month and the tenants did not pay a security deposit. The landlord's son testified that the tenants have caused disturbances and that is why the landlord personally served the tenants with a one month Notice to End Tenancy for cause on May 4<sup>th</sup>. The landlord hired a contractor to apply a seal coat to the paved driveway at the rental property. The tenants were verbally informed not to use the driveway after the coating was applied and until it had dried, but they did so anyway, destroying the coating. According to the landlord

there was a confrontation between the parties and the police were called. The landlord said that the upstairs tenant has complained that the tenants have been noisy and have disturbed her and been abusive towards her. The landlord said that neighbours have complained about noise caused by the tenants.

The landlord personally served the tenants with a 10 day Notice to End Tenancy for unpaid rent on May 4, 2015. The landlord said that the tenants did not pay rent for May in the amount of \$850.00 and that they have paid no rent for June. The tenants applied on May 4<sup>th</sup> to dispute both Notices to End Tenancy. At the hearing the tenants acknowledged that they have not paid rent for May or June. The tenant said that the tenants have not paid rent because of the landlord's conduct, harassment of the tenants and denial of services, including heat, parking and laundry. Although the tenants referred to rent payments of \$850.00 per month in their application for dispute resolution, at the hearing the tenant testified that the rent was supposed to be \$850.00 per month only when the tenant's parents were living in the rental unit; otherwise the rent was supposed to be \$600.00 per month. The tenant testified at the hearing that he paid the landlord a \$400.00 security deposit at the beginning of the tenancy. He said the payment was given in cash and the landlord did not provide a receipt. The landlord denied that any security deposit was ever paid.

### Analysis

The *Residential Tenancy Act* provides by section 26 (1) that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. The *Residential Tenancy Act* permits a tenant to deduct an amount from a rent payment without first obtaining an order only when the tenant has paid for emergency repairs as defined by the Act and the landlord has not reimbursed the tenant after the tenant has provided written particulars to the landlord. The only other exception to the requirement to pay rent is contained in section 43(5) of the Act; it provides that: If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenant has not performed any repairs and there has been no rent increase since commencement of the tenancy. The tenants have not established that they have any basis for withholding rent payments and I find that they have not provided evidence of any ground that would excuse them from their obligation to pay rent. The tenants' application to cancel the 10 day Notice to End Tenancy for unpaid rent is therefore dismissed without leave to reapply.

There is no written tenancy agreement, but the tenants noted on their application that they have paid monthly rent in the amount of \$850.00. I accept and prefer the landlord's testimony that the monthly rent is \$850.00 over the tenant's evidence that the rent is variable, based on the number of occupants. I make no finding as to whether or not the tenants paid a security deposit. If the tenants assert that they have a right to the return of a security deposit, it will be

up to them to make a claim with respect to it and the landlord will be able to submit evidence in opposition to such a claim.

I find that the landlord is entitled to a monetary award in the amount of \$1,700.00. I do not allow the landlord's claims for an amount said to have been deducted from December's rent or for a claim for driveway sealer of \$330.00 because the landlord has not provided any accounting records with respect to the rent payments and the landlord has not provided evidence, including photographs or invoices to show what was paid for the driveway sealer and what damage is alleged to have been caused by the tenants.

Because the tenancy has ended pursuant to the 10 day Notice to End Tenancy, it is unnecessary to address the validity of the one month Notice to End Tenancy for cause.

### Conclusion

The tenants' application to cancel the 10 day Notice to End Tenancy has been dismissed without leave to reapply. The landlord has applied for an order for possession. I grant the landlord an order for possession effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that court.

I have awarded the landlord the sum of \$1,700.00 for rent for May and June. The landlord is entitled to recover the \$50.00 filing fee, for a total claim of \$1,750.00 and I grant the landlord an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

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 16, 2015

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Residential Tenancy Branch

