



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OLC, OPR, OPB, MNR, FF

### Introduction

This hearing dealt with applications by both parties. The tenants applied for an order setting aside a notice to end this tenancy and an order compelling the landlord to comply with the tenancy agreement and the landlord applied for an order of possession and a monetary order. Both parties participated in the conference call hearing.

### Issue to be Decided

Should the notice to end tenancy be set aside?  
Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties were able to agree on very few facts. The tenants provided a partial copy of a tenancy agreement which stated that the tenancy began on November 15 and that \$1,250.00 in rent was payable on the 15<sup>th</sup> day of each month. They did not provide a copy of signature page of the agreement and the landlord denied having signed that agreement. The parties agreed that the tenants replaced the flooring in the rental unit in lieu of the \$1,250.00 security deposit and further agreed that on or about November 27, the tenants paid \$1,250.00 in rent. The landlords testified that the tenants were given keys to the rental unit in late November and moved their belongings into the unit on or about December 5. They claim that \$1,250.00 in rent was due on the first of each month.

The tenants testified that the landlord agreed that they could renovate the rental unit and they would be paid \$20.00 per hour for their labour and reimbursed for any costs incurred. They testified that they have not paid all of the rent the landlord claims is due because they have spent thousands of dollars in labour and materials renovating the house and the landlord owes them a substantial amount of money. They claim that they

did not move into the unit until December 17, which was when the toilets were installed in the home by the landlord's contractor.

The landlord testified that before the tenants agreed to rent the unit, they offered to renovate the home at an estimated total cost of \$12,000 - \$15,000 and the landlord did not agree to this because he was able to secure another contractor who gave him an estimate for approximately half that cost. The landlord denied having asked the tenants to do work or having offered to pay them any amount of money.

The parties agreed that the tenants were given permission to repaint the rental unit. The tenants claimed this was part of the work for which the landlord promised to pay them while the landlord stated that he allowed the tenants to repaint because they wanted to move into the unit before the renovations would be completed by KH, the contractor he retained to do the work. He stated that no remuneration was to be paid to the tenants for their labour, although he offered to repay them for the cost of paint. He claimed that the only legitimate invoice provided by the tenants for paint was for \$21.12.

The parties agreed that the tenants provided him with photographs of the home for the first several months as renovations were underway. The tenants claimed that these photographs were to show the work they were performing while the landlord said they were to simply show him the progress of the renovations as he was out of province for a time. The tenants acknowledged that KH was working on renovating the unit during the first several months of the tenancy.

The parties agreed that the tenants paid \$1,250.00 to the landlord on November 27, \$500.00 on January 19 and \$1,000.00 at some point in February. The tenants claimed that during the month of December, the landlord offered in a telephone conversation to reduce their rent to \$1,000.00 per month. The landlord denied having made such an offer.

The parties agreed that on April 8, 2015, the landlord served on the tenants and the tenants received a 10 day notice to end tenancy for unpaid rent (the "Notice"). The tenants did not apply to dispute the Notice until April 16 and when asked if there was a reason why they waited to file their application for dispute resolution, the tenants stated that they did not know.

The landlord seeks an order of possession and a monetary order for \$1,000.00 in unpaid rent for March and \$1,250.00 in unpaid rent and loss of income for each of the months of April, May and June.

### Analysis

Section 46(5) of the Act provides that if tenants who receive a notice to end tenancy for unpaid rent do not either pay the rental arrears in full or dispute the notice within 5 days are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. In this case, the tenants acknowledged having received the Notice on April 8 and did not dispute it for 8 days. Unless the tenants can prove that there are no rental arrears, the tenants are conclusively presumed to have accepted that the tenancy has ended.

I find for the following reasons that the tenants have not proven that there are no rental arrears. The tenants were unable to show a tenancy agreement which shows that they were permitted to pay their rent through their labour rather than through cash payments to the landlord. The landlord has disputed that he agreed to pay the tenants any amount of money for their labour and a contractor has been renovating the rental unit throughout much of the tenancy, which shows that the landlord was paying someone else to do the work the tenants claim they were paid to do. Also, the tenants have made partial payments to the landlord, and I find it unlikely that they would do so if they were permitted to pay their rent through their labour.

I find that the tenants were in arrears at the time the Notice was served and I find that they did not dispute the Notice within 5 days and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. I note that even if the tenants had disputed the Notice within 5 days, I have found that they were required to pay rent and therefore they would not have succeeded in their application to have the Notice set aside. I dismiss the tenants' claim in its entirety and I find that the landlord is entitled to an order of possession. The tenants must be served with this order. Should the tenants fail to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

The landlord has credited the tenants with full payment for the months of December – February inclusive and for \$250.00 in March, although he did not receive this much money from them, presumably to credit them also with the \$1,250.00 in flooring he accepted in lieu of a security deposit. I find that the landlord is entitled to recover \$1,000.00 in unpaid rent for the month of March and \$1,250.00 in rent for each of the months of April and May and I award him \$3,500.00. I further find that the landlord will lose income for at least half the month of June as the tenants are still residing in the unit and I award him \$625.00 for lost income for half the month of June. If the landlord is unable to re-rent the unit for the last half of June, he has liberty to re-apply to recover that amount.

As the landlord has been successful in his claim, I grant him his filing fee of \$50.00 for a total entitlement of \$4,175.00. I grant the landlord a monetary order under section 67 for this amount. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants' application is dismissed. The landlord is granted a monetary order for \$4,175.00. I note that the security deposit of flooring in lieu of cash has already been applied to the rental arrears.

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 01, 2015

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Residential Tenancy Branch

