



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF  
                             CNR, MNDC, RP, RR, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord.

The landlord attended the hearing with her spouse and called 2 other witnesses. One of the tenants attended as agent for all named tenants, and called one witness. The landlord, the landlord's spouse, the landlord's witnesses, the tenant and the tenant's witness all gave affirmed testimony. The parties were given the opportunity question each other and the witnesses with respect to the evidence and testimony provided.

The landlord has also provided copies of Canada Post cash register receipts and 3 Registered Domestic Customer Receipts addressed to each of the named tenants, and I am satisfied that all tenants have been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing the landlord advised that the tenants' evidentiary material was not received by the landlord. The tenant advised that it was sent to the landlord by registered mail on July 13, 2015, however the copy provided to the Residential Tenancy Branch was received by the Branch on September 8, 2015. The Rules or Procedure require that evidentiary material be provided to the Branch and to the landlords well in advance of the hearing, and the tenant has not done so. The

tenant has not provided any evidence of having sent the material to the landlord by registered mail, and I am not satisfied that it has been provided in accordance with the Rules, and I decline to consider it.

All other evidence provided has been reviewed and is considered in this Decision.

#### Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy for unpaid rent or utilities was issued in accordance with the *Residential Tenancy Act*?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for retroactive rent reduction and damages for loss of use of appliances and other services?
- Have the tenants established that the landlord should be ordered to make repairs to the unit, site or property?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Is the landlord entitled under the *Residential Tenancy Act* to an order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

#### Background and Evidence

**The landlord's first witness** testified first. The witness testified that she became property manager for the landlord and her spouse on July 15, 2015.

This tenancy began on March 7, 2015 as a fixed term tenancy to March 31, 2016, at which time the tenancy ends. The tenants still reside in the rental unit. Rent in the amount of \$3,300.00 per month was payable under the tenancy agreement, however the parties agreed to reduce it to \$3,200.00 starting May 1, 2015. Rent is due on the 1<sup>st</sup> day of each month. At the outset of the tenancy the tenants paid a security deposit to the landlord in the amount of \$1,400.00 but the cheque was returned for insufficient funds. The landlord did not receive any other deposits from the tenants. A copy of the tenancy agreement has been provided.

The tenants were to pay a pro-rated amount of rent for the first month, and the agreed upon amount was \$2,400.00 and the tenants paid that however the cheque was returned for insufficient funds. In April, 2015 the tenants paid \$2,000.00 toward the outstanding rent, leaving a balance due of \$400.00, and then they paid \$2,500.00 for April's rent leaving a further deficit of \$800.00. In May, the tenants paid the full reduced rent of \$3,200.00 but have not paid any rent since. The tenants are in arrears now, up to the end of September, 2015 the sum of \$14,000.00.

The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to one of the tenants on June 13, 2015. Both pages of the 2-page form have been provided, and it is dated June 13, 2015 and contains an expected date of vacancy of June 30, 2015 for \$3,200.00 of unpaid rent that was due on June 1, 2015. The landlord's witness testified that at that time the arrears were actually \$4,400.00 including the outstanding rent from March through May, 2015, and prior to retaining the property manager, the landlord did not understand the amount that should have been written on the notice.

The landlord served another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to one of the tenants on July 5, 2015, and the landlord's property manager sent another copy to the tenants by registered mail that day. A copy of that notice has been provided and it is dated July 5, 2015 and contains an effective date of vacancy of June 30, 2015 for unpaid rent in the amount of \$7,600.00 that was due on June 1, 2015.

The tenants told the landlord about mice at the rental house so the landlord called a pest control company in April, 2015. Also during the tenancy the landlord had the stove, washer and dryer repaired.

**The landlord** testified that on March 7, 2015 the tenant tried to give the landlord cash but the landlord requested a cheque, and then it bounced. Then the tenant gave the landlord a bank draft for \$2,000.00.

All items were repaired whenever the tenants called. The tenants had asked for a second kitchen and the landlord had that installed at a cost to the landlord of about \$6,000.00. It's a brand new home and the second kitchen was completed by the end of March, 2015. There were problems with the fridge but the landlord replaced it right away. There was also an issue with the stove, which was repaired on March 15, 2015, but still needed to be lit with a lighter, then it was fixed correctly on April 24, 2015 but tenant said there was still a problem, so the repair fellow came back right away.

On June 13, 2015 the landlord went to collect rent and took the notice to end the tenancy with her. The male tenant was angry and the parties talked about it, and he promised to pay the rent. He said there were mice. However nothing was paid and the landlord left the notice on the table. After a few days she called the tenant again but still nothing was paid. The landlord talked to the other male tenant who said he had paid rent to the other tenant and told the landlord to serve another notice, so they did. The landlord did not know the rules, but the second notice was served on July 5, 2015 to that tenant. She was accompanied by her husband and witnesses, and the landlord's husband gave the notice to the tenant. The tenants only complained about things in the rental unit when the landlord tried to collect rent.

Rent was reduced in favour of the tenants because they needed good people to rent and take care of the property. Initially the house was advertised for \$3,195.00 per month but the tenants wanted another kitchen and the landlord said it would be more rent so they agreed to \$3,300.00, but it was reduced to \$3,200.00 during the tenancy at the tenant's request.

**The landlord's husband** testified that he only got involved during move-in, not in advertising or choosing the tenants. The day after they moved in the landlord got a call from the tenant about the stove not working. The landlord's husband agreed to a lower amount of the pro-rated rent for the first month, which should have been \$2,700.00 but only charged \$2,400.00, and took the tenants out for dinner.

The landlord and the landlord's husband took care of things in a very timely basis, even while their daughter was in a concert. The parties had agreed to a security deposit and a pet damage deposit and both should have been paid before they moved in, but the tenants said they were having some financial constraints, but agreed to pay them. Then the rent cheque bounced. The tenants promised to make payments, called the landlord asking to not deposit cheques yet, and 2 cheques were returned for insufficient funds. The landlord's bank charges \$49.00 each time, but the landlord has not requested that from the tenants.

After the tenants had been there for months they alleged the house wasn't fit to live in. It was a brand new beautiful house. The landlord's husband told the tenants that if they can't afford it, they should leave, but they asked to reduce the rent to \$2,500.00. The landlords disagreed, but the tenant did talk them into waiving the pet damage deposit.

**The landlord's final witness** testified that she was with the landlord on June 13, 2015 at the rental unit and they went to the door. One of the male tenants answered it, and he started yelling and screaming and said he'd withhold rent, and slammed the door in their faces. The witness was intimidated and worried for their safety. They went to the

back yard and the female tenant was there and she was handed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

**The tenant** testified that problems started right at the beginning. The landlord was supposed to give the tenants keys to start moving boxes in on the 6<sup>th</sup> of March, but the keys were the wrong keys and the alarm code was wrong.

Rent was only going to be \$3,300.00 after the second kitchen was completed. Until then it was agreed upon at \$2,800.00 per month, and the landlord only got \$2,000.00 for the first month. However, the tenants had to clean and found mouse droppings in every drawer. The tenant showed the landlord when they arrived that afternoon and told the landlord it was bad. Someone had lived there for 3 years prior and it was not left clean. The tenant showed the landlord the stove and hood fan, which didn't work, and the garburator and light over the sink didn't work either.

The stove burned gas but was also electric, and the tenant could hear it click when turning it on, but it wouldn't light. The tenant had to light it with a lighter each time. It also sparked. The fireplace doesn't work right; the tenants called a contractor who advised that the pilot light was out and leaking gas into the home. Carpets weren't clean either.

The tenants didn't pay the security deposit because the landlord said things would be fixed, but they weren't. Nothing has been done. The stove was out for 64 days, the washer broke down 2 days after the tenancy began. The same evening that the washer was fixed it started to leak into the basement. The tenant called the landlord who attended during their daughter's recital, and a plumber arrived the next day. The plumber said it wasn't a job for a plumber but for an appliance repair person, further delaying the repair.

The tenant further testified that the tenants are high maintenance people, strict on cleaning and agrees that it is a beautiful home. However, the tenants claim \$1,424.00 from the landlords for the loss of use of the stove, washer and other items not attended to by the landlord, and seeks an order reducing rent for the landlord's failure to provide a rental unit as agreed upon.

**The tenant's witness** is the adult daughter of the tenant, who also lives with the tenant and testified that things have not been taken care of by the landlord. The fireplace has never been fixed, rodents have not been attended to, nor have the stove, or fridge, or freezer. The washer was repaired within a few days.

The bathroom still smells of pet urine.

The witness was present when the landlord arrived on June 13, 2015 with another person. The tenant was sick, and the landlord came in through the back door fence but did not hand the tenant anything. The landlord used the bathroom and they left.

### Analysis

Once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*. I have reviewed the notices and I find that they are in the approved form and contain information required by the *Act*. The tenant and the tenant's witness both testified that the notice wasn't served on June 13, 2015, however the landlord and the landlord's witness testified that it was.

The tenant did not dispute that the second notice was served personally on July 5, 2015 or that it had been sent again by registered mail the same day. Documents served by registered mail are deemed to have been served 5 days later, which I find is July 10, 2015. The tenant disputed that notice on July 9, 2015, clearly within 5 days.

The tenant does not dispute that rent has not been paid. Although the *Act* requires a landlord to make repairs, the *Act* also states that a tenant must pay the rent even if the landlord has failed to comply. Therefore, I find no reason to cancel the notice, and the tenant's application in that regard is dismissed. I find that the landlord is entitled to an Order of Possession on 2 days notice to the tenants.

With respect to the landlord's monetary claim, I find that the landlord has established unpaid rent in the amount of \$14,000.00, and I so order. There is no dispute to that.

With respect to the tenant's claim for a reduction in rent, I find it hard to imagine that rent should be reduced when the tenants simply withheld it. They even withheld the security deposit. The tenant's application in that regard is also dismissed.

With respect to the tenants' application for monetary compensation for loss of use of appliances, required cleaning, and pest issues, I have absolutely no evidence before me to substantiate that the landlord failed to comply with the *Act*, that the tenants suffered any loss, or the amount of loss that the tenants may have suffered. The landlord and the landlord's spouse testified that any complaints about the rental unit came when the tenants were asked to pay rent.

In the circumstances I am not satisfied that the tenants have established any claim against the landlord.

Since the tenancy is ending I decline to order the landlord to make repairs to the unit, site or property.

The landlord has been successful with the application and is therefore entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$14,050.00.

These orders are final and binding and may be enforced.

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: September 10, 2015

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Residential Tenancy Branch

