



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel two 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on July 31, 2015 and August 10, 2015.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary matters

At the outset of the hearing the tenant LS, had to be cautioned about using foul language at the hearing and was cautioned on several occasions that their behavior was inappropriate.

At the outset of the hearing the landlord requested to amend their application to include subsequent unpaid rent since filing their application. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlord's application is amended to include a claim for unpaid rent for September 2015, and October 2015.

In this matter the parties have had several hearing relating to this tenancy.

On August 22, 2013, the landlord was granted an order of possession and a monetary order in the amount of \$4,650.00. The tenants did not participate in the hearing although found to be duly served.

On May 20, 2015, both parties attended a dispute resolution hearing which was convened in response to the tenants' application to cancel a notice to end tenancy for unpaid rent. At the hearing the tenants' withdrew their application, and the landlord request for a verbal order of possession was not granted.

On July 13, 2015, both parties attended a dispute resolution hearing which was convened in response to their respective applications. On July 14, 2015, both applications were dismissed because the applications were filed under the Manufacture Home Park Tenancy Act, and not the Residential Tenancy Act.

However, at the hearing the Arbitrator made findings that the tenants failed to provided sufficient evidence to prove a rent to own situation, and found that an oral tenancy agreement was made.

The decision in part reads,

"However, the Tenant submits that this is not a tenancy but a rent to own agreement. There is no written contract between the parties that conclusively states that the tenancy was entered into with the intention that payments were being made towards the purchase of the mobile home and the Landlord disputes this assertion by the Tenant. While the Tenant has provided a number of reasons which claim to point to a rent to own situation, I find that in the absence of any independent documents such as a contract or a finding by the Supreme Court as to the ownership interest the Tenant "might" have, the evidence is not sufficient or conclusive enough for me to find that this is a rent to own situation."

...

"Based on the foregoing, I find the Tenants have failed to establish that this tenancy is outside of the jurisdiction of the Act. Accordingly, I find that this situation involves an oral tenancy agreement."

[Reproduced as written]

As the tenants attended this hearing attempting to reargue the rent to own situation that was heard on July 13, 2015, I find I cannot reconsider that matter as the previous

Arbitrator determined that the matter was within the jurisdiction of the Residential Tenancy Branch until otherwise determined by the Supreme Court. As that matter was already heard, I find the legal principals of Res Judicata apply.

### Issues to be Decided

Should the Notices issued on July 31, 2015, and August 8, 2015, be cancelled?

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary for unpaid rent?

### Background and Evidence

This tenancy began in 2009. Rent in the amount of \$1,315.00 was payable on the 1<sup>st</sup> each month. The rent was reduced in April 2015 to \$1,270.00 for removal of a phone service.

The landlord testified that the tenants continue not to pay the rent and were served with the Notices to end tenancy dated July 31, 2015 and August 8, 2015 in the amount of \$18,923.00. The landlord stated that the Notices included unpaid rent in the amount of \$4,685.00 that a previous monetary order was issued on August 22, 2013, and \$2,000.00 for a personal loan that was given to the tenants. The landlord stated that the amount of additional rent owed at the time their application was filed was \$12,238.00 and no rent for September 2015 and October 2015, have been paid. The landlord seeks a monetary order in the amount of \$14,778.00.

The tenant LS testified that they have not paid any money to the landlord since January 2015. The tenant stated that why should they pay rent when they believe they had a rent to own agreement.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

In this case, the previous Arbitrator found that this was an oral tenancy agreement and not a rent to own agreement. Although the tenants disagree with that decision made on July 14, 2015, they were required to file for Judicial Review in the Supreme Court to determine otherwise. The tenants have not done so and their time for filing that review has now expired.

In this case, the tenants were served with the Notices and have admitted not paying any money for 10 months. I find that the landlord is entitled to an order of possession pursuant to section 55 of the Act, 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.

The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I find that the landlord has established a total monetary claim of **\$14,878.00** comprised of unpaid rent up to and including October 2015 (the previous monetary order and the personal loan are not included in this amount) and the \$100.00 fee paid by the landlord for this application. I grant the landlord a monetary order pursuant to section 67 of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

As a result of the above, the tenants' application to cancel the Notices is dismissed

### Conclusion

The tenants failed to pay rent. The tenants' application to cancel the Notices is dismissed.

The landlord is granted an order of possession and a monetary order.

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: October 14, 2015

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Residential Tenancy Branch

