



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RR, OPR, MNR, & FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$350 for unpaid rent
- c. An order to recover the cost of the filing fee?

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order cancelling an additional rent increase
- b. An order to cancel the 10 day Notice to End Tenancy dated October 4, 2015
- c. An order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.
- d. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 10 Notice to End Tenancy was personally served on the Tenants on October 4, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated October 4, 2015?
- b. Whether the tenants are entitled to an order cancelling an additional rent increase?
- c. Whether the tenants are entitled to an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.
- d. Whether the tenants are entitled to an order recover the cost of the filing fee?
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to A Monetary Order and if so how much?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

The landlord has not served a Notice of Rent Increase. As a result I dismissed the application for an order cancelling an additional rent increase.

### Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on November 1, 2013. The rent was \$1100 per month payable on the first day of each month. The tenants paid a security deposit of \$550 and a pet damage deposit of \$550 at the start of the tenancy.

The tenants fell into arrears. Over time the tenants were able to repay much of the arrears. However, as of the date of the 10 day Notice to End Tenancy and the hearing the tenants owed the sum of \$350 in arrears of rent that had accumulated over time.

The Application for Dispute Resolution filed by the tenants deny they owe any arrears of rent. The tenants submit that in addition they are entitled to compensation in the sum of \$550 for the reduced value of the tenancy caused by excessive construction noise for the months of July and August 2015. .

At the hearing the tenants admitted to owing the outstanding rent.

The back of the 10 day Notice to End Tenancy includes the following statements:

**“Tenants may dispute the notice for specific reasons such as:**

- They have proof the rent was paid; or,
- They have an order from an arbitrator giving them permission to keep all or part of the rent; or
- They held part or all of the rent with prior notice to the landlord, for the cost of emergency repairs.

**Important facts:**

- The tenant is not entitled to withhold rent unless ordered by an arbitrator.
- The tenant who accepts the notice must move out by the date set out on page w of this notice or sooner.
- An error in this notice or an incorrect move-out date does not necessarily make the notice invalid.”

Section 26(1) provides as follows:

**Rules about payment and non-payment of rent**

- 26** (1) 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 landlord submits he is legally entitled to an Order for Possession and a monetary order for non-payment of rent. The tenants have admitted to arrears of rent of \$350. He stated he encouraged the tenants to attend at the Residential Tenancy Branch when he served them with the 10 day Notice to End Tenancy. The tenants failed to pay the arrears within the 5 day period which would void the Notice to End Tenancy. He submits he is entitled to the Order for Possession even if the tenants are entitled to the amount claimed a reduction of rent.

The landlord testified the market rent is \$1600 per month. He submitted he is prepared to reinstate the tenancy and allow the tenants to remain in the rental unit on the condition the tenants pay a rent increase of \$250 per month commencing October 1, 2015 which would increase the rent from \$1100 to \$1350. He further stated that if the tenants are not prepared to agree to this increase he would prefer to re-take possession as he is legally entitled to do and rent it for market rent to a third party.

The tenants were extremely upset by the proposal. One of the tenants is very ill. They submit the landlord is only entitled to a rent increase of 2.5% as provided in the Regulations. They submit this amounts to blackmail. However, they reluctantly agreed to the following settlement.

Settlement:

The parties reached a settlement of this matter and asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The parties will enter into a tenancy agreement in writing that provides that the rent will be \$1350 per month commencing October 1, 2015.
- b. The parties acknowledge there are rent arrears of \$250 for October and \$250 for November. The parties agree the tenants shall be permitted to re-pay these arrears with the following payments:
  - i. \$250 on December 1, 2015
  - ii. \$250 on January 1, 2016.
- c. The landlords waive and release their claim for a monetary order in the sum of \$350 plus the \$50 filing fee for unpaid rent owing prior to September 30, 2015.
- d. The tenants waive and release the landlords for any claims they may have for a monetary order for a reduction of rent for the months of July and August and the cost of the filing fee.

As a result of the above settlement I dismissed all claims in both applications conditional on the parties entering into a written tenancy agreement that provided for the rent increase set out above. If the parties fail to enter into the tenancy agreement as set out above either party shall have a right to re-apply.

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: November 18, 2015

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Residential Tenancy Branch

