



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – CNR, OLC, ERP, RP, LRE

For the landlord – OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for an Order to cancel the 10 Day Notice to End Tenancy for unpaid rent or utilities; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to make emergency repairs; for an Order for the landlord to make repairs to the unit, site or property; and for an Order to suspend or set restrictions on the landlord's right to enter the rental unit. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants DH and the landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. The landlord testified that he had served the tenant YS with his hearing package but not DH. The landlord was unable to confirm when he served his hearing package but thought it was about two weeks ago. The tenant testified that the landlord has not served either of the tenants with his hearing package and they do not know what the landlord's claim is for. The landlord agreed he received

the tenants' hearing package. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

#### Procedural Matter

As I have insufficient evidence before concerning service of the landlord's hearing documents upon both tenants I am unable to proceed today with the landlord's application. The tenants have a right to know what the landlord has applied for and in this case the landlord is unable to demonstrate to my satisfaction that each respondent was served with the hearing package and any evidence in accordance with the Rules of Procedure 3.1. Consequently, the landlord's application is dismissed with leave to reapply.

#### Preliminary Issues

I have determined that the portion of the tenants' application dealing with any claim other than the request seeking cancellation of the 10 Day Notice to End Tenancy for unpaid rent is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules of Procedure, I have severed the tenants' application and dismissed that portion of the tenants' application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; for an Order for the landlord to make emergency repairs; for an Order for the landlord to make repairs to the unit, site or property; and for an Order for the to suspend or set restrictions on the landlords right to enter the rental unit.

#### Issue(s) to be Decided

Are the tenants entitled to an Order to cancel the 10 Day Notice to End Tenancy?

#### Background and Evidence

The parties agreed that this month to month tenancy started on September 01, 2015. Rent for this unit is \$880.00 per month due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$440.00.

The landlord testified that the tenants did not pay rent for October, 2015 and a 10 Day Notice to End Tenancy for unpaid rent (the Notice) was served upon the tenants in person on October 06, 2015. The Notice informed the tenants that they had five days to either pay the outstanding rent or file an application to dispute the Notice, or the tenancy would end on October 06, 2015.

The landlord testified that the tenants did file an application to dispute the Notice but have not paid rent for October, November or December, 2015.

The landlord orally requested at the hearing that the 10 Day Notice be upheld and an Order of Possession issued to be effective as soon as possible.

The tenant testified that they did not pay rent for October, November or December, 2015. The landlord had promised to do some repair work in the unit and repaint the unit after there had been a fire there before the tenants moved in. This work was supposed to have been completed prior to the tenants moving in and has still not been done. The tenants therefore withheld their rent.

The tenants seek to have the Notice cancelled.

### Analysis

I refer the parties to s. 26 of the *Act* which states:

*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 tenant attending did not dispute that rent has not been paid for October, November and December, 2015. It is therefore my decision that the tenants have breached s. 26 of the *Act* and failed to pay rent to an amount of \$2,640.00. Consequently, I uphold the Notice and the tenants' application to cancel the Notice is dismissed.

I refer the parties to s. 55(1) of the *Act* which states:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

The landlord has orally requested an Order of Possession. Having upheld the Notice I will grant that Order. The effective date on the Notice in this matter was October 06, 2015; however, as the Notice was served in person to the tenants on that date the effective date of the Notice is amended to October 16, 2015 pursuant to s. 53 of the *Act*. As that date has now passed, I grant the landlord an Order of Possession effective two days after service upon the tenants.

### Conclusion

I HEREBY dismiss the tenants' application in its entirety.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective two days after service on the tenants. This Order must be served on the tenants, if the tenants fail to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The landlord is at liberty to file a new application for a Monetary Order for unpaid rent, for money owed or compensation for damage or loss and to keep the security deposit.

As this tenancy will end the portion of the tenants' application not heard today is dismissed without leave to reapply.

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: December 03, 2015

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Residential Tenancy Branch

