



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LICO REALTY LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following in the details of the dispute:

*Unpay Rent November + December 2015*

[Reproduced as written]

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy in December 2015 which is after the effective date of the 10 Day Notice. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing convened to hear matters pertaining to the Landlord's Application for Dispute Resolution filed on December 1, 2015. The Landlord sought an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security deposit; for money owed or compensation for damage or loss under the *Act, regulation or tenancy agreement*, and to recover the cost of the filing fee from the Tenants.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On December 1, 2015 the Landlord submitted 5 pages of evidence to the RTB. The Landlord affirmed that he served the Tenant with copies of the same documents that he had served the RTB in two separate packages. One sent by registered mail and the other was posted to the Tenant's door. The Tenant acknowledged receipt of hearing documents via registered mail and argued that no other documents were served upon him. During the hearing the Tenant began to look through the envelope and pulled out many other pieces of paper.

I favored the Landlord's evidence over the Tenant's as the Landlord's evidence had been submitted and grouped together as one package. As such, I accepted the Landlord's submission as evidence for these proceedings.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) # 6.4 provides that without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party.

At the outset of the hearing the Tenant submitted that he was requesting an adjournment because he had recently had back surgery. Upon further clarification the Tenant stated that his co-Tenant, D.O.T. was no longer a tenant as they were no longer together. He argued he was flat on his back which is why he requested the adjournment.

After careful consideration of the above, I found that it would be prejudicial to the Landlord if this matter was adjourned as the Tenant had not paid rent for three months. Furthermore, there was no evidence that the Tenant had attempted to have someone else appear on his behalf. After I told the Tenant that the hearing would proceed the Tenant confirmed that he could continue to speak on the phone.

Both parties were represented at this hearing and were capable to provide oral evidence. Accordingly, I refused the Tenant's request for an adjournment and proceeded with the hearing.

The *Residential Tenancy Policy Guideline # 13* defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. Co-tenants have equal rights under the tenancy and are jointly and severally responsible for any debts or damages relating to the tenancy. That means the landlord can recover the full amount owed from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord. I agree with this policy.

In addition to the foregoing, there was no evidence before me that indicated the female co-tenant had been properly removed from the tenancy agreement. Therefore, there was insufficient evidence to prove the female Tenant had been removed from her responsibilities to this tenancy. Therefore, no amendments to the style of cause have been made and both Tenants remained as the named respondents.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

Have the parties agreed to settle these matters?

#### Background and Evidence

The Landlord submitted evidence that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on December 15, 2009 and switched to a month to month tenancy after November 30, 2010. The Tenants were initially required to pay rent of \$1,800.00 on the first of each month. The rent was subsequently increased to \$2,111.50. On November 11, 2009 the Tenants paid \$900.00 as the security deposit.

During the course of this proceeding the parties agreed to settle these matters.

#### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing, the parties discussed the issues between them, engaged in a conversation and achieved a resolution of their dispute on the following terms:

- 1) The Landlord agreed to settle these matters instead of pursuing his application for Dispute Resolution;
- 2) The Tenant agreed to pay the Landlord the three months outstanding rent for November 2015, December 2015, January 2016 in the amount of **\$6,334.50** (3 x 2,111.50) no later than **January 25, 2016**;

- 3) The Tenant agreed to pay all future rent in full by the first of each month, in accordance with the *Act*;
- 4) The parties agreed that this tenancy would continue if the Tenant paid the outstanding rent as agreed in (2) above; and

The terms of this settlement agreement were reached by the participants' own free will and without undue pressure or intimidation. The parties agreed to settle these matters; therefore, I declined to award recovery of the filing fee.

In support of the settlement agreement, the Landlord has been issued a conditional Order of Possession and Monetary Order, pursuant to section 62 of the *Act*. These orders will be in full force and effect and may be served upon the Tenant in the event the Tenant does not pay the Landlord the \$6,334.50 in full, as agreed in the settlement listed above.

If the Tenant complies with all of the terms of the settlement agreement and his payment clears the bank, then the Order of Possession and the Monetary Order will be of no force or effect.

#### Conclusion

The parties agreed to settle these matters, pursuant to section 63 of the *Act*. The Landlord was issued a conditional Order of Possession and Monetary Order in the event the Tenant does not comply with the settlement agreement.

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: January 25, 2016

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Residential Tenancy Branch

