



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord: OPR, MNR  
Tenant: CNE, CNR, MNDC

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to cancel 2 notices to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; his agent; and both tenants.

This hearing was originally scheduled in response to the tenants' Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for End of Employment submitted on December 7, 2015.

The tenants submitted an Amendment to an Application for Dispute Resolution on December 21, 2015 seeking to include disputing a 10 Day Notice to End Tenancy for Unpaid Rent they received on December 16, 2015.

The tenants submitted a second Amendment to an Application for Dispute Resolution on January 14, 2016 seeking to include a monetary claim in the amount of \$25,000.00.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the 1 Month Notice to End Tenancy for End of Employment and the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy is not sufficiently related to the tenants' claim for compensation. The parties were given a priority hearing date in order to address the question of the validity of the 1 Month Notice to End Tenancy.

The tenants' monetary claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month and/or the 10 Day Notices.

As a result, I accept the tenants' first amendment to include disputing the 10 Day Notice to End Tenancy for Unpaid Rent. However, as I have found the tenants' monetary claim is not sufficiently related to the issue of whether or not the tenancy continues, I decline to accept the tenants' second amendment.

I note the tenants remain at liberty to file a separate Application for Dispute Resolution seeking any compensation they seek as a result of the tenancy.

I also note that the landlord had originally submitted an Application for Dispute Resolution by Direct Request seeking an order of possession and a monetary order based on the 10 Day Notice issued on December 16, 2015.

Through that process the landlord was granted, on December 30, 2015, both an order of possession and a monetary order in the amount of \$550.00 for unpaid rent. On January 8, 2016 the tenants submitted an Application for Review Consideration on that decision.

On January 18, 2016 the tenants were granted a new hearing to deal with the landlord's Application. In the decision that granted that new hearing the Arbitrator ordered that the new hearing be heard at the same time as the hearing that had been set for the tenants' original Application.

#### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 1 Month Notice to End Tenancy for End of Employment and 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46 and 48 of the *Residential Tenancy Act (Act)*.

It must also be decided if the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46 and 55 of the *Act*. I also note that the landlord may be entitled to an order of possession pursuant to Sections 48 and 55 of the *Act* if the tenants' Application for Dispute Resolution seeking to cancel the 1 Month Notice is dismissed.

#### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties by February 22, 2015 for a month to month tenancy beginning on March 15, 2015 for the monthly rent of \$550.00 due on the 1<sup>st</sup> of each month with a security deposit of \$225.00 paid.

The parties agreed despite the due date of the 1<sup>st</sup> of each month noted in the tenancy agreement the mutually agreed upon practice was for rent to be paid on the 15<sup>th</sup> of each month. In essence, then, the rental period was from the 15<sup>th</sup> of one month to the 14<sup>th</sup> of the next.

Both parties submitted into evidence the following relevant documents:

- A copy of a 1 Month Notice to End Tenancy for End of Employment issued on November 30, 2015 with an effective vacancy date of December 30, 2015 citing the tenant's rental unit is part of an employment arrangement that has ended and the unit is needed for a new employee;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on December 16, 2015 with an effective vacancy date of December 26, 2015 for unpaid rent in the amount of \$550.00 due December 15, 2015.

The parties confirmed that both tenants had been employed by the landlord to work in the kennel and that the employment was not related to any duties as a caretaker or manager of the residential property.

The landlord submitted that the tenants had failed to pay the rents that were due on November 15, 2015; December 15, 2015; and January 15, 2015. The landlord submitted the 10 Day Notice was served to the tenants on December 16, 2015.

The tenants confirmed the Notice was served as described the landlord's agent in the hearing but stated that this service was not witnessed by anyone as stated in the landlord's Proof of Service document submitted as part of the landlord's Application for Dispute Resolution by Direct Request.

The tenants submitted that they had paid rent by November 15, 2015 for the period that would end on December 14, 2015. The landlord did not dispute this statement.

The tenants also submitted that the reasons they did not pay the rent on December 15, 2015 included restrictions on services and facilities provided by the landlord and the amount in the Notice itself being incorrect.

The tenants stated that when their employment with the landlord ended the landlord had restricted some of the services and facilities that had been provided during the tenancy. In support of this the tenants submitted a copy of a letter written by the landlord's agent stating that:

“...due to your termination of employment and tenancy you will be required to access the shower and laundry area only after we are closed or before we open. You are not to access any other parts of the kennel including the yards and the other buildings. You may not talk with other staff nor our clients. All access to or the computer had been terminated” [reproduced as written].

The male tenant testified that because the landlord imposed these restrictions and terminations that the tenants felt were not allowed, they should have been compensated. In their written submissions the tenants stated that since the restrictions began on November 30<sup>th</sup> they determined an amount equivalent to ½ month's rent or \$275.00.

Also in their written submission, the tenants purport that at the suggestion of Residential Tenancy Branch staff they decided to withhold the full \$550.00 due on December 15, 2015 “due to the mishandling of this issue, and being we already had a hearing date set, that the issue would be resolved on January 29<sup>h</sup>” [reproduced as written].

The tenants submitted a copy of a letter they sent to the landlord acknowledging their responsibility to pay the rent owed “as referred in the 10 Day Notice to End Tenancy issued on 12/16/2015” [reproduced as written]. The letter goes on to say the tenants believe it is in their best interest to use their limit financial resources to find a new rental unit and that the landlord has not changed the rent in consideration of the facility restrictions.

The tenants also submitted, in relation to the amount noted as rent due of \$550.00 on the Notice to End Tenancy for Unpaid Rent, that because the landlord had already issued a 1 Month

Notice to End Tenancy with an effective vacancy date of December 30, 2015 the amount on the Notice should have only been for ½ month's rent.

### Analysis

Section 48(1) of the *Act* states a landlord may end the tenancy of a person employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part by giving notice to end the tenancy if:

- (a) The rental unit was rented or provided to the tenant for the term of his or her employment;
- (b) The tenant's employment as a caretaker, manager or superintendent is ended; and
- (c) The landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

Section 48(2) states an employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving notice to end the tenancy if the employment is ended.

From the testimony of both parties, I find that neither tenant was employed as a caretaker, manager, or superintendent of the residential property. As a result, I find the landlord cannot end the tenancy for the reason of ending the tenants' employment with another business.

I therefore find the 1 Month Notice to End Tenancy for End of Employment issued on November 30, 2015 to be invalid and I order this Notice has no force or effect.

Section 46 of the *Act* states a landlord may end a tenancy if any amount of rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 26 of the *Act* states that 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 the right under this *Act* to deduct all or a portion of the rent.

The *Act* restricts a tenant's ability to deduct any amount from rent to very specific situations. Some of the allowable reasons to deduct an amount from rent include:

- an overpayment of a security deposit;
- a tenant's payment for the completion of emergency repairs, after the tenant has taken prescribed steps to complete;
- as allowed or directed by an Arbitrator after an award to the tenant for compensation or rent reduction has been granted to the tenant, and not before such an order has been granted.

While the tenants submitted that they had been guided by Residential Tenancy Branch staff to withhold a portion or all of their rent because of the circumstances outlined in this case, I find it unlikely Branch staff would provide such guidance since Section 26 of the *Act* clearly requires tenants to pay rent when it is due unless they have a right, under the *Act*, to withhold any amount, and regardless of having a hearing date set.

Based on the testimony of the tenants, I find the tenants have provided no evidence or testimony that their actions, to withhold any amount of rent from the landlord, were allowed under the *Act*.

In addition, in regard to the tenants' position that the amount on the 10 Day Notice was an incorrect amount because they should not have been obligated to pay rent beyond December 30, 2015 due to the effective date of the 1 Month Notice, again I refer to Section 26 of the *Act*.

Furthermore, the tenants had already filed their Application for Dispute Resolution seeking to cancel the 1 Month Notice, so their intention was to have the tenancy continued by having the Notice cancelled. As such, by the time rent was due on December 15, 2015 the tenants were aware that their Application would be heard on January 29, 2016 and they would remain living in the unit well passed January 14, 2016.

As well, I accept that, by practice, the parties had changed the terms of the tenancy agreement to make the term from the 15<sup>th</sup> to 14<sup>th</sup> of each month as opposed to the written term of the tenancy agreement that started the rental period on the 1<sup>st</sup> of each month. As such, even if the 1 Month Notice to End Tenancy for End of Employment had been valid the earliest effective date would have been January 14, 2016, as noted by the tenants.

Based on the above, I find the tenants had no authority to withhold any amount of rent from the rent that was due to the landlord on December 15, 2015. As such, I find the landlord was allowed to end the tenancy by issuing a 10 Day Notice to End Tenancy for Unpaid Rent on December 16, 2015.

Also based on the above, I find that the amount owed for the period beginning December 15, 2015 was the full amount of rent, \$550.00. Furthermore, since the tenants have remained in the rental unit beyond January 15, 2016 when rent was again due, I find the tenants also owe the landlord \$550.00 for the current rental period.

Despite the landlord's testimony that the tenants had not paid rent for November 2015, I find this is unlikely. I note that the 10 Day Notice to End Tenancy for Unpaid Rent specifically outlined the amount owed was \$550.00 for the amount owed on December 15, 2015 and the landlord's original Application for Dispute Resolution by Direct Request only sought rent for the period beginning December 15, 2015. I note there is nothing in the landlord's documentary evidence that supports non-payment of rent for the period beginning on November 15, 2015.

### Conclusion

Based on all of the above:

- I order the original decision, dated December 30, 2015 on the landlord's Application for Dispute Resolution by Direct Request be set aside;
- I order the original Monetary Order issued on December 30, 2015 in the amount of \$550.00 be set aside; and
- I order the original Order of Possession issued on December 30, 2015 requiring the tenants to surrender possession of the rental unit to the landlord be confirmed.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant the landlord a monetary order in the amount of **\$1,100.00** comprised of rent owed.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 29, 2016

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Residential Tenancy Branch

