



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Linden Investments Limited  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on February 24, 2016 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail to the address noted on the Application.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

### **Issue(s) to be Decided**

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

Is the landlord entitled to a monetary Order for unpaid rent?

### **Background and Evidence**

The tenancy with an individual who signed a tenancy agreement commenced two years ago. That person paid rent via direct cheques to the landlord from a government agency. Rent is \$750.00 per month due on the first day of each month. A security deposit that had been paid was previously applied to rent owed.

In December 2015 the tenant and a female, who is named on the application and the 10 day Notice issued by the landlord, paid one half of the rent each, directly to the landlord. The landlord accepted the rent from the female, J.F.; she was a friend of the tenant.

In January the tenant did not pay the rent. The landlord went to the rental unit and

eventually accepted rent from J.F. The landlord told J.F. that she was not a tenant and that she should move out. J.F. paid January 2016 rent by cash; a receipt was not issued.

In February 2016 the landlord went to the rental unit in an attempt to receive the rent payment. The landlord asked J.F. to pay the rent and to move out as she was not their tenant.

During the hearing the landlord explained that J.F. was not his tenant but that the original tenant has left; the landlord does not know where he is. The landlord had no evidence, other than the termination of rent payments; that the tenant had vacated. The original tenant did not give notice but his rent cheques are no longer issued by the government, to the landlord.

The landlord stated that on February 3, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of February 13, 2016 was personally served to J.F. Service took place at 3:00 p.m., by the manager.

The landlord named only J.F. and "unauthorized occupants" as tenants on the Notice ending tenancy. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$750.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord did not name their tenant on the Notice ending tenancy or serve him with Notice of this hearing.

### Analysis

I have considered the status of J.F.; the person who was named as tenant on the application for dispute resolution and the 10 day notice to end tenancy for unpaid rent.

The landlord has clearly stated that J.F. did not enter into a tenancy with the landlord. She moved into the unit without permission and even though she paid one half of the rent in December 2015 and all of the rent in January 2016; she has been told she does not have a tenancy with the landlord.

Residential Tenancy Branch policy defines an occupant as:

*Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.*

Based on the submissions of the landlord I find that J.F. is an occupant. The landlord stated this person is not a tenant and policy supports that stance.

Therefore, I find that the landlord has named the wrong party on the Notice ending tenancy and application for dispute resolution and that the application is dismissed with leave to reapply naming the correct party.

The landlord is at liberty to issue a Notice ending tenancy in the name of their tenant and to serve that Notice and hearing documents by the appropriate method. The landlord may wish to investigate the Direct Request Proceeding application process.

### Conclusion

The application is dismissed with leave to reapply naming the correct party.

This decision is final and binding on the parties and 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: March 16, 2016

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Residential Tenancy Branch

