



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPB, MNR, FF, CNC, MNDC, ERP, RP, O

### Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for cause and for breach of an agreement pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing by conference call and gave affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence package(s) of the other party. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

### Preliminary Issue

The tenants clarified that her monetary claim was unrelated to the tenants and landlords' applications for dispute over ending the tenancy.

Residential Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. As such, the tenants' application for a monetary claim, for emergency repairs, for repairs and an order for the landlord to comply with the Act, Regulations or tenancy agreement are dismissed with leave to reapply as they are unrelated to the issue of possession of the rental premises.

### Issue(s) to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid utilities and recovery of the filing fee?

Are the tenants entitled to an order cancelling the notice to end tenancy?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on September 14, 2014 on a fixed term tenancy ending on September 1, 2015 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 29, 2014. The monthly rent was \$1,250.00 and a security deposit of \$600.00 was paid on September 1, 2014.

On January 14, 2016, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice displays an effective end of tenancy date of February 15, 2016. The 1 Month Notice set out that it was being given as:

- the tenant or person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- put the landlord's property at significant risk.

The landlords clarified that the tenancy agreement was at an end and that;

- the tenant failed to vacate the rental unit;
- the tenant has failed to pay utilities after written notice;

The landlord also seeks a monetary claim of \$900.00 for unpaid utilities. The landlord stated that the tenants have failed to pay any utilities for approximately 18 months. Both parties confirmed that the signed tenancy agreement provides for the utilities. It states,

*Notes: Water Bill will be dermined in 6 months. Won't charge more than \$50.00 a month.*

The tenants disputed the landlords' claims stating that the notice to end tenancy that was served was incomplete and that no notice was served regarding the utilities. The tenants stated that the landlord has not provided any details for the payment of utilities. The landlords gave undisputed affirmed testimony that the incomplete notice must have been an error on their part. The landlords clarified that no written notice was given to the tenants for a demand for utilities. The landlord also stated that no details of the unpaid utilities have been given to the tenants.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Section 47 (3) of the Act states,

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52 of the Act states,

#### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find based upon the undisputed affirmed testimony of both parties that the landlord failed to complete the 1 Month Notice dated January 14, 2016 prior to serving it to the tenants and find that it is unenforceable as it is incomplete. The 1 Month Notice dated January 14, 2016 is set aside. The tenancy shall continue. The tenant's application to cancel the 1 Month Notice dated January 14, 2016 is granted.

As for the landlord's monetary claim, I find that the landlord has failed to provide notice to the tenants of unpaid utilities and their details. I find that the landlord's monetary claim is premature at this time and dismiss the landlord's monetary claim with leave to reapply.

I decline to make an order for the return of the filing fee as the landlords' have not been successful in their application.

### Conclusion

The 1 Month Notice dated January 14, 2016 is set aside. The tenancy shall continue. The tenants' application to cancel the 1 Month Notice is granted. The landlord's monetary claim is dismissed with 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: March 08, 2016

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Residential Tenancy Branch

