



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF  
CNR, CNC, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order cancelling a notice to end the tenancy for cause; and to recover the filing fee from the landlord.

The landlord attended the hearing accompanied by a person who was affirmed to well and truly interpret the proceedings. The tenants also attended the hearing and all parties gave affirmed testimony. The parties were given the opportunity to question each other with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Has the landlord established a monetary claim for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep the security deposit in partial satisfaction of the claim?



- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on February 1, 2016, although the tenants moved in a few days earlier, and expires on February 1, 2017. The tenancy continues on a month-to-month tenancy after the expiry of the fixed term, and the tenants still reside in the rental unit. Rent in the amount of \$1,500.00 per month is payable on the 1<sup>st</sup> day of each month, in addition to utilities. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is the upper level of a house, and the lower level is also tenanted. A copy of the tenancy agreement has been provided.

The tenants failed to pay rent when it was due for the month of March, 2016 and the landlord personally served one of the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 2, 2016 a copy of which has been provided. The notice is dated March 2, 2016 and contains an effective date of vacancy of March 11, 2016 for unpaid rent in the amount of \$1,500.00 that was due on March 1, 2016. No rent has been paid since the notice was served.

The landlord also served the tenants with a 1 Month Notice to End Tenancy for Cause on March 2, 2016 by personally handing it to one of the tenants. A copy has been provided and it is dated March 1, 2016 and contains an effective date of vacancy of April 30, 2016. The reasons for issuing it are:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testified that the tenants in the lower level of the rental house had been complaining about noise from the rental unit and that the tenants were slamming doors every time they entered or exited the rental unit. The complaints were made by text message on February 26, 2016.



The landlord made an appointment to inspect the rental unit 2 days prior and the tenants agreed. When the landlord arrived with an inspector, the tenants refused the landlord entry but allowed in the inspector.

After the landlord was pushed out of the rental unit, the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided. The notice is dated February 26, 2016 and contains an effective date of vacancy of April 30, 2016. The reason for issuing the notice is: The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse. The landlord testified that the tenants agreed to move out of the rental unit but wanted compensation before they would move. The landlord didn't know how else to end the tenancy with compensation, but the tenants have not paid any rent for March or April, 2016.

The landlord claims an Order of Possession, \$3,000.00 in unpaid rent and an estimate of the utilities of \$240.08, for which no bill has yet been received, an order permitting the landlord to keep the security deposit and recovery of the \$100.00 filing fee.

**The first tenant** (HBG) testified that the tenants received the 2 Month Notice to End Tenancy for Landlord's Use of Property and accepted it. The tenants were going to move earlier, being March 1, 2016 and give the landlord notice, but the landlord told the tenants that the security deposit would not be returned, so the tenants decided to leave on April 15, 2016 and the landlord could use the security deposit for half a month's rent and the tenants would be entitled to compensation for the other month.

The tenant agrees that utilities will be owed, however does not agree with the landlord's estimate of \$240.08 stating that the bill used for the estimate is for one and a half months. The tenant agrees to \$120.00 for unpaid utilities.

**The second tenant** (KDG) testified that the landlord arrived at the rental unit on February 29, 2016 with an inspector and gave the tenants a 2 Month Notice to End Tenancy for Landlord's Use of Property right away. To avoid hostility, the tenant did not want the owner to enter the rental unit but allowed the inspector in.

The tenant also testified that the Residential Tenancy Branch advised that it might be a good idea to hold onto the rent money because the tenants may move earlier than the 2 months, so the tenants held off paying any rent until this hearing has concluded.

The tenants wanted repairs done in the rental unit, which the landlord refused to do, so the tenants accepted the 2 months' notice from the landlord.



## Analysis

The *Residential Tenancy Act* states that where a tenant is served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, the landlord is required to provide the tenants with compensation in an amount equivalent to one month's rent on or before the effective date contained in the notice. The tenant may end the tenancy earlier by giving the landlord 10 days written notice of the tenant's intention to vacate the rental unit and must pay rent to the effective date of the tenant's notice, and is still entitled to the compensation equivalent to one month's rent on or before the effective date of the tenant's notice. The *Act* also states that a tenant may withhold the amount from the last month's rent. In this case, the tenants never gave the landlord any written notice of their intention to vacate the rental unit and didn't pay any rent. I find that the tenants had no legal right to withhold rent for March and the landlord had a legal right to end the tenancy earlier than the 2 Month Notice would take effect.

The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and according to the *Act*, the tenants had 5 days to dispute the notice or pay the rent in full. The tenants admit that they didn't pay any rent for March or for April, and the effective date of vacancy contained in that notice is March 11, 2016 which has already passed.

Because the tenants didn't pay any rent for March, 2016, I find that the landlord is entitled to an Order of Possession on 2 days notice to the tenants for unpaid rent, and the landlord is not required to provide the tenants with any compensation because the 10 day Notice takes effect prior to the month that the tenants would have been entitled to the compensation.

I also find that the tenants, by failing to move out of the rental unit by the effective date of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, are over-holding, and the landlord has established a monetary claim as against the tenants for unpaid rent for March and April, 2016 in the amount of \$3,000.00.

The tenants do not dispute that utilities are owed, and agree that the sum of \$120.00 is payable. The landlord seeks an estimated amount of \$240.08. I have reviewed the evidentiary material provided by the parties, including the notice given to the tenants, and I find that the landlord has established a claim of \$120.04.

Since the tenancy is ending, I find there is no need to address the 1 Month Notice to End Tenancy for Cause, and the tenants' application to cancel it is dismissed.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.



I order the landlord to keep the \$750.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$2,470.04 ( $\$3,000.00 + \$120.04 + \$100.00 = \$3,220.04 - \$750.00 = \$2,470.04$ ).

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further order the landlord to keep the \$750.00 security deposit, and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,470.04.

These orders are final and binding and may be enforced.

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: April 12, 2016

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Residential Tenancy Branch