



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR  
                              CNR, RR

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlords as against 2 tenants and by one of the tenants. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The landlords and the tenants attended the hearing and both landlords and one of the tenants gave affirmed testimony. The parties also provided evidentiary material in advance of the hearing, some of which was not received by the Residential Tenancy Branch within the time prescribed by the Rules of Procedure, however neither party raised any issues with respect to service or delivery of documents or evidence.

### Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

**The first landlord** (JH) testified that this month-to-month tenancy began on February 1, 2015 and the tenants still reside in the rental unit. A copy of the tenancy agreement has been provided by the landlords which states that rent in the amount of \$2,300.00 per month is payable on the 1<sup>st</sup> day of each month, however when a roommate moved out,

the tenant could no longer afford the rent, and the landlords agreed to reduce rent to \$2,000.00 per month effective January 1, 2016. At the outset of the tenancy the landlords collected a security deposit from one of the tenants in the amount of \$1,150.00 which is still held in trust by the landlords, and no pet damage deposit was collected.

During the course of the tenancy, the tenant who applied for dispute resolution and is named in the tenancy agreement had 2 different roommates, the first of whom moved out and a new roommate moved in. The parties had agreed that the roommates would pay a portion of the rent, and the tenant would pay another portion. The tenant failed to pay her portion in May, and on May 8, 2016 the landlords caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated May 7, 2016 and contains an effective date of vacancy of May 17, 2016 for \$1,200.00 of unpaid rent that was due on May 1, 2016. The landlord testified that the roommate paid some of the rent due, but the tenant has not paid any rent since the issuance of the notice, and considering the tenant's portion only, the tenant is in arrears \$1,200.00 for May and \$1,200.00 for June.

The landlord further testified that the HVAC system in the rental home was fixed and has been working since October, 2015, and the landlords are not aware of it not functioning since.

The landlords seek an Order of Possession and \$3,600.00 for May, June and July, assuming the landlords will not be able to re-rent for July 1, 2016. The landlords have not applied for an order permitting the landlords to keep the security deposit, testifying that the landlords will deal with the security deposit at the end of the tenancy.

**The second landlord** (BH) testified that in response to the tenant's application to reduce rent, he believes, in comparing the rate of consumption of utilities prior to this tenancy, the utilities are similar. The landlords had technicians look at the HVAC system, and disagrees that the utilities are outrageous. One technician told the landlords that there was damage to the HVAC unit, so the landlords got a quote to fix it, and told the tenant that the landlords wanted a second opinion. The second technician said there was a wiring problem and the landlords had that repaired as well as replacing the fan motor. The technician told the landlord that the system was working when he left.

The landlord also told the tenant in October, 2015 that the HVAC system was not the primary source of heat, and the tenants should use the baseboard heaters as the primary source, as well as the fireplace.

**The tenant** testified that after moving in, the tenant's boss, who is quadriplegic moved into the rental unit with the tenant and her family. They advised the landlords that a grant could be obtained to renovate the lower level to accommodate that person, which was done. That person paid \$750.00 per month and had to have his own tenancy agreement in order to obtain the grant. The tenant believes that they entered into a separate tenancy agreement.

The tenant didn't pay any rent for May or June due to conversations with the landlords about having an electrician attend to determine the amount of power the HVAC system was drawing and how it was affecting the utility bills. Utilities are not included in the rent, and 2 technician companies advised that the system needed to be replaced. The tenant further testified that it needed replacing since June, 2015, and the tenant had no air conditioning for that summer.

The tenant was the care aid for the first roommate, and when he moved out, rent was reduced because the tenant was no longer employed by him, and the landlords agreed to reduce rent due to affordability, but not for the lack of air conditioning.

The tenant seeks an order reducing rent, and has provided a transaction record of utilities paid, but the tenant's application does not seek recovery of any amount, nor does the tenant have any information about how much rent should be reduced by considering the high utility bills and loss of air conditioning last summer.

### Analysis

The *Residential Tenancy Act* does not permit a tenant to withhold rent even if the landlord has failed to comply with the *Act* or the tenancy agreement. In this case, the tenant agrees that rent was withheld.

The *Act* also states that a tenant must pay rent when it is due. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act*. The tenant has not paid the rent, and therefore, I find that the landlords are entitled to an Order of Possession, and the tenant's application to cancel the notice is dismissed. Since the effective date of vacancy has already passed, I grant the Order of Possession on 2 days notice to the tenants.

The parties have apportioned rent due by each of the current tenants, and the portion outstanding is that of the tenant who applied for dispute resolution and gave affirmed testimony. The landlords also seek \$3,600.00 for unpaid rent to the end of July. I am not convinced that the landlords will not be able to re-rent the rental unit, and it's clear

that the landlords have been paid a portion of the rent for May and June, 2016. Therefore, I find that the landlords have established a monetary claim for unpaid rent in the amount of \$2,400.00.

With respect to the tenant's claim for a reduction in rent, in order to be successful, the onus is on the tenant to establish that damages or a loss has been suffered, that the damage or loss suffered is a result of the landlords' failure to comply with the *Act* or the tenancy agreement, the amount of such loss and what efforts the tenant made to mitigate any loss suffered. As well, the tenant must be able to establish that repairs, services or facilities agreed upon were not provided. I am satisfied that the air conditioning was not working for the tenant during the summer last year and was agreed to at the commencement of the tenancy. However, I am not satisfied in the evidence before me what portion of the rent should be reduced, or what the amounts of the utility bills ought to have been, or that there was an outrageous amount due to the landlords' failure to have the HVAC system repaired. Therefore, the tenant's application is dismissed.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

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

I further grant a monetary order in favour of the landlords as against the tenant, JPN pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,500.00.

This order is 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: June 14, 2016

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Residential Tenancy Branch