



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF  
                              CNR, MNDC, LRE, RP, RPP, RR, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for:

- an Order of Possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the tenant for the cost of the application.

The tenant has applied for:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlords make repairs to the unit, site or property;
- an order that the landlords return the tenant's personal property;
- an order suspending or setting conditions on the landlords' right to enter the rental unit;
- an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and
- to recover the filing fee from the landlords.

The hearing did not conclude on the first scheduled date and was adjourned to continue. My Interim Decision was provided to the parties after the first scheduled date. Both landlords attended the hearing with legal counsel on both dates of the hearing. The tenant also attended on both dates and was represented by legal counsel and was accompanied by an Articled Student, with the consent of the landlord's counsel.

Both landlords and the tenant gave affirmed testimony and the parties' counsel were given the opportunity to question each other with respect to the testimony and evidence

provided and to make closing submissions. The landlords also obtained the services of an Interpreter who was affirmed to well and truly interpret the proceedings.

Late evidence was provided by counsel for the landlords, which I received during the hearing. My Interim Decision specified that during the course of the hearing, the parties agreed to late exchange of evidentiary material.

My Interim Decision also specified that: “Also, during the course of the hearing, I advised the parties that due to the number of applications made by the tenant the hearing would proceed, limited to the issues of the landlords’ application for an Order of Possession and monetary order for unpaid rent and the tenant’s application to cancel a notice to end the tenancy for unpaid rent.”

After the hearing had concluded I received written submissions from counsel for the tenant specifying that understanding. I hereby dismiss the tenant’s applications for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlords make repairs to the unit, site or property;
- an order that the landlords return the tenant’s personal property;
- an order suspending or setting conditions on the landlords’ right to enter the rental unit;
- an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided

with leave to reapply. I also dismiss the landlords’ application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement with leave to reapply. I have made no findings of fact or law with respect to the merits of those applications, and only the evidence pertaining to the remaining applications is included or considered in this Decision.

#### Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established that the notice to end the tenancy for unpaid rent or utilities was issued in accordance with the *Residential Tenancy Act*, or should the notice be cancelled?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?

### Background and Evidence

**The first landlord** (MSD) testified that this month-to-month tenancy began on September 27, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$450.00 per month is payable on the 1<sup>st</sup> day of each month. The tenant did not pay a security deposit or a pet damage deposit to the landlords. A copy of a tenancy agreement has been provided which is entitled "Contract of Rental" and is signed by a tenant and a landlord dated September 27, 2014. It states:

"Rules outlined in this contract.

1. No smoking within the premises;
2. Rental payment of \$450 per month will be paid in full on the first of every month.

If any of these rules are broken then the landlord has the right to evict with at least a one week notice. By signing this contract, I acknowledge that the rules sated have been understood."

No where in the agreement does it indicate a security deposit or pet damage deposit. The landlord testified that the signature of the tenant differs on the tenancy agreement from that on the Tenant's Application for Dispute Resolution because the tenant placed her full name on the application and signed the tenancy agreement, and was crying at the time the tenancy agreement was signed by the parties.

The landlord further testified that the rental unit is a basement suite and the landlords reside in the upper unit. The landlords have resided there a long time and have had several different tenants. The tenant had no money or references or a job and was crying. The landlords tried to help out the tenant, and co-signed a car loan in January, 2015 because the tenant needed one for a job offer. The tenant hasn't paid any rent for 18 months and is currently in arrears of rent the sum of \$8,100.00. The landlord agreed that no rent would be paid until the tenant was employed. The landlords got the tenant the job as head of security sometime in 2015, took her there, and insisted she work there. The landlord's wife had previously worked there and the landlord paid for the tenant's security guard license, and expected the tenant to start paying rent. The landlord spoke to the tenant about it, and the tenant said she needed money for the car payment, gas, insurance and food and would pay when she could. The landlord asked a few times for rent and the tenant said she would pay and would not leave without paying every penny owed.

The landlord further testified that his wife knew how much the rent was but was not aware of the oral agreement that no rent would be paid until the tenant was employed, but she

doesn't interfere. It was he that entered into the tenancy agreement with the tenant, negotiated rent, and agreed to defer rent. His wife had no idea or involvement.

The landlord told the tenant on May 1, 2016 that as a result of up-coming surgery the landlord needed to use the suite, and the tenant agreed to move out at the end of May. The landlord told his wife that the tenant would be leaving and would be storing her belongings in the garage. The tenant moved belongings into the garage, and the landlord told his wife that the tenant would pay every penny owed when she picked up her belongings. The landlord's wife didn't know how much was owed for rent at that point, nor did the landlord have a calculation, but they knew how long the tenant had been there. He went to hospital May 17 and was hospitalized till May 26, 2016.

The landlord's spouse served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities without the landlord's knowledge. A copy has been provided and it is dated May 18, 2016 and contains an effective date of vacancy of May 23, 2016 for \$2,250.00 unpaid rent that was due on May 1, 2016. A Proof of Service document has also been provided which states that the notice was hand delivered to the tenant on May 18, 2016 and is witnessed by another person and signed by the landlord and the witness.

On May 26, 2016 the landlord's spouse also filed the Landlord's Application for Dispute Resolution without the landlord's knowledge, however the tenant has not paid one penny of rent. A typewritten or computer generated spreadsheet has been provided showing that \$450.00 of rent for the months of January to May, 2016 is owed to the landlords, and handwriting appears at the bottom of the spreadsheet adding the month of June, 2016. The total owed shows \$2,600.00. The landlord testified that he did not create the document and does not know whose handwriting appears on the bottom.

**The second landlord** (SKG) testified that for the first 8 months of the tenancy the tenant ate meals at the landlords' residence and the parties had a very good relationship.

At the time the rental unit was rented, she was not aware that her husband agreed to defer collection of rent from the tenant and was told by her husband at a later date that the tenant would start paying rent when she got a job but did not say how much.

The landlord further testified that her spouse had not told her prior to going into hospital on May 17, 2016 what the amount of rent was. Her husband did not say anything about ending the tenancy, just that he wouldn't be able to do stairs due to surgery and when he returned he would speak with the tenant himself. She never confronted the tenant about unpaid rent. The landlord's Affidavit states that on May 18, 2016 she served the tenant

with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the advice of the police.

The landlord filed the Landlord's Application for Dispute Resolution after police advised her to do so, but had no idea up to the point of serving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities how much rent was owed. The landlords' accountant helped to fill out the form, who advised the landlord that only 6 months rent should be claimed.

The landlords seek an Order of Possession for unpaid rent and a monetary order for \$2,600.00.

**The tenant** testified that she started to rent in October, 2014 and discussed the rental arrangement with the landlord wife in the absence of the landlord husband. The tenant had called once she saw an advertisement and the landlord picked up the tenant and the parties discussed the tenancy. The landlord said rent would be \$450.00 per month including utilities. The tenant moved her belongings from her previous employer's place, and paid the landlord a security deposit of \$225.00. The same day, the tenant paid the first month's rent; the landlord said she'd give the tenant a key once the rent was paid. Rent was paid every month thereafter in cash to the landlord wife but never received any receipts. Rent for June, 2016 was made by cheque, which the tenant left at the landlords' door; the tenant didn't want to confront the landlords since they were in dispute. A copy of the cheque and the envelope it was delivered in have been provided.

The tenant first saw the tenancy agreement when she received it with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by courier. The tenant denies signing the tenancy agreement, and testified that she never uses just her initials.

The tenant obtained a job in February, 2015 for a security company, and prior to the tenancy had employment until the tenant was out of country from December, 2013 to September, 2014 during which time the tenant was supported by her parents.

The tenant also denies talking to the landlord husband on May 17, 2016 about vacating the rental unit. The tenant had to work from 10:00 a.m. to 6:30 p.m. and didn't talk to the landlord that day at all. The tenant slept in the rental unit the night of May 16, went to work in the morning locking the door, and received a call from a guest that the key no longer worked and asked the tenant to return home. The tenant tried to open the door, noticed the lock was changed and police were called. The tenant was permitted to re-enter the rental unit.

The tenant denies that no rent has been paid and seeks to have the landlords' application for an Order of Possession and a monetary order for unpaid rent dismissed.

### Analysis

Firstly, dealing with the tenancy agreement, I have reviewed the signature of the tenant on the Tenant's Application for Dispute Resolution and the initial of the tenant on the tenancy agreement, and find that there is no comparison, even considering the testimony of the landlord that the tenant was crying at the time she allegedly signed it, and considering that one is initials and one is a full signature. I also note that the landlords originally made the application for dispute resolution by way of the Direct Request Process which requires a landlord to provide a copy of a tenancy agreement. I find that there is sufficient evidence to satisfy me that the tenant did not sign the tenancy agreement. Regardless of the validity of the tenancy agreement, however, the parties agree that rent is \$450.00 per month.

With respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the onus is on the landlords to establish that it was issued in accordance with the *Residential Tenancy Act*. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. I have also reviewed the Proof of Service document provided by the landlords stating that the notice was served on May 18, 2016 personally to the tenant. However, the tenant testified that it was received by courier but did not specify a date. Regardless of the date or method it was served, the tenant received it. The *Act* requires a tenant to pay rent in full within 5 days of service or deemed service, or must dispute the notice within that 5 day period. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the tenant filed the application for dispute resolution disputing the notice on May 24, 2016. Due to the conflicting evidence of when it was served, I find that the tenant has disputed the notice within the time required under the *Act*.

With respect to unpaid rent, both landlords testified that the tenant never paid any rent over the course of the tenancy and owe the landlords \$8,100.00 to the end of May, 2016. I also accept that the tenant moved into the rental unit on September 27, 2014 for a tenancy commencing October 1, 2014, however that would amount to \$9,000.00 for 20 months to the end of May, 2016. The tenant testified that she always paid in cash and never got a receipt. The tenant also testified that she gave the landlords a cheque for June's rent, and provided a copy as well as the envelope it was delivered in. The first landlord testified that the tenant was permitted to not pay rent until she became employed, and the evidence before me is that the tenant obtained employment in February, 2015. The landlord also testified that he again agreed to defer rent at the tenant's request and the tenant agreed to pay all money owed. The landlord has no

knowledge of who made up the spreadsheet, and upon examination I find that the addition is incorrect. The landlord wife testified that she had no knowledge of the arrangement between her spouse and the tenant about the payment or deferral of rent, yet served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. She also testified that she was advised to only claim 6 months rent, but at \$450.00 that would amount to \$2,700.00, yet the notice to end the tenancy specifies \$2,250.00 and the Landlord's Application for Dispute Resolution shows \$2,600.00.

Considering the evidence before me, I am not satisfied that the landlords have any idea whether or not the contents of the notice to end the tenancy are true and therefore I cancel it.

Further, considering the evidence before me, I am not satisfied that the landlords have established what amount, if any is owed for rent, and the landlords' application for a monetary order for unpaid rent or utilities is dismissed.

Since the tenant has been successful with the application, the tenant is entitled to recovery of the \$100.00 filing fee, and I hereby grant a monetary order in favour of the tenant in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

### Conclusion

For the reasons set out above, the landlords' application for an Order of Possession for unpaid rent or utilities is hereby dismissed.

The landlords' application for a monetary order for unpaid rent or utilities is hereby dismissed.

The landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

I hereby cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 18, 2016, and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 as recovery of the filing fee, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

The balance of the tenant's application is hereby 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: July 19, 2016

---

Residential Tenancy Branch



