



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Greg Moroso and Associates Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, DRI, OLC, PSF, RR

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenants disputing a rent increase; and seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order that the landlord comply with the *Act*, regulation or tenancy agreement; an order that the landlord provide services or facilities required by law; and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The hearing did not conclude on the first date scheduled and my Interim Decision was provided to the parties. The named landlord was represented at the hearing by an agent who was also accompanied by an Advocate on both scheduled dates. Both tenants also attended the hearing on both scheduled dates. The tenants were assisted by a Legal Advocate on the second day of the hearing.

The landlord had provided evidentiary material that was before the tenants but not before me prior to the first scheduled date. I have now received the evidentiary material, and all evidence provided by the parties has been reviewed and is considered in this Decision. No further issues with respect to service or delivery of evidence were raised.

The landlord's agent gave affirmed testimony and called one witness who also gave affirmed testimony. Both tenants also testified, and the parties were given the opportunity to question each other and the witness.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Have the tenants established that rent has been increased contrary to the *Residential Tenancy Act*?

- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Have the tenants established that the landlord should be ordered to provide services or facilities required by law?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

**The landlord's witness** testified that he is the on-site manager of the complex. The tenancy began on June 1, 2016 on a month-to-month basis and the tenants still reside in the rental unit. Rent in the amount of \$600.00 per month is payable on the 1<sup>st</sup> day of each month. No security deposit or pet damage deposit was collected by the landlord. The rental unit is a kitchenette suite in a motel and a copy of the tenancy agreement has been provided.

The landlord's witness further testified that the tenants worked for the landlord doing general clean-up on the grounds to get the business re-opened, and the tenancy agreement permits a payroll deduction for the payment of rent in the amount of \$300.00 for each of the 2 tenants. It states: "Consent for rent to be deducted from payroll - \$300 (for one tenant) and \$300 (for the other tenant). The witness was the supervisor of the tenants while employed by the landlord, however, the tenants no longer work for the landlord and have not since around mid-August, 2016, so there has been no payroll deduction for the payment of rent beyond that date.

The landlord's witness testified that on September 22, 2016 he personally served one of the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy has been provided and it is dated September 22, 2016 and contains an effective date of vacancy of October 2, 2016 for unpaid rent in the amount of \$600.00 that was due on September 1, 2016. The tenants have not paid any rent since the issuance of the notice, and if they had, they would pay it directly to the witness or the landlord's agent. As far as the witness is aware, rent has not been increased.

**The landlord's agent** testified that he is a Court appointed receiver, and as such no actions must be brought against him in any tribunal. However, the landlord has not provided a copy of that order, and the landlord's agent testified that he consents to the hearing.

The landlord's agent further testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is signed by him, and no rent has been paid to him since the issuance of the notice.

With respect to the tenants' applications regarding services and facilities, the landlord's agent testified that none were operable when he took over as receiver. The tenants were in the rental unit at that time and there was no power or hot water.

The building was built in 1968 and has old gas heaters in each room. In order to turn on the gas, the landlord needs access to each individual room, and the tenants haven't answered the door, so the landlord's agents gave up on it. Police had also been to the property who told the landlord's agent that cable was not required, but other utilities are, and there is power to the rental unit.

With respect to an increase in rent, the landlord's agent testified that a letter was provided to the tenants dated August 11, 2016 stating that rent for the unit is the amount of rent for summer months for the motel, considering that the tenants were no longer employed by the landlord, but rent has not been increased by a written notice.

**The first tenant** testified that the tenants have resided in the rental unit for almost a year and entered into a month-to-month tenancy with the current landlord.

The tenants were waiting for Work Safe claims and the mail wasn't being given to them by the landlord's agents. A letter dated August 30, 2016 was sent to the tenants about a claim but the tenants didn't receive it until September 22, 2016. The tenant had asked the on-site manager who said he would check for mail, but never got back to the tenants. Then another letter dated October 6, 2016 wasn't received by the tenants until October 20. Rent may have been paid sooner if the tenants had received the documentation to complete the claim.

On September 10, 2016, after the landlord's letter of August 11, 2016 increasing the rent, the landlord's agent and the landlord's witness and another tenant attempted to physically remove the tenants. Then immediately after police left the property, the landlord's agents disconnected the cable. Prior to that, everyone had cable.

On October 13, 2016 the landlord's agents turned on the gas for the heat for all units except for the tenants' rental unit, and the tenants have no heat.

The tenant further testified that the application disputing a rent increase is with respect to the landlord's letter of August 11, 2016.

**The second tenant** (JD) testified that she has lots of stuff in the garage and has no key and can't get access to it.

### Analysis

In this case, the landlord's agent testified that he is a Court appointed Receiver and as such any tribunal has no authority without leave of the Court. However, no proof of that has been provided and the landlord company has entered into a tenancy agreement with the tenant specifically stating that the *Residential Tenancy Act* applies. Therefore, I find that the *Act* applies. Further, the landlord's agent consented to the hearing commencing, and on the first day of the hearing objected to the tenants' request to adjourn.

The *Residential Tenancy Act* states that where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. The *Act* also states that once a landlord has served a tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent or dispute the notice. In this case, the tenants have disputed the notice, but do not dispute that the rent hasn't been paid. A landlord is entitled to receive rent when it is due regardless of what the financial position of the tenant is, and I am not satisfied that the tenants have established that rent would have been paid prior to the issuance of the notice if the landlord's agents had delivered the mail to the tenants. I have reviewed the tenancy agreement, and I find that the tenants were to pay rent on September 1, 2016 and have failed to do so.

I have also 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*. I find that the landlord has issued it in accordance with the *Act*, and the tenants' application to cancel it is dismissed. Where I dismiss a tenant's application to cancel such a notice, I must grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenants.

I further order the landlord to comply with the *Act* with respect to belongings of the tenants stored in the rental unit or other areas of the rental property.

Since the tenancy is ending, I dismiss the tenants' application for an Order that the landlord comply with the *Act*, regulation or tenancy agreement, as well as the tenants' application for an order that the landlord provide services or facilities, as well as the tenants' application for an order reducing rent. I further find that the landlord has not increased rent contrary to the *Act*, and the tenants have not paid a rent increase.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety.

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

I order the landlord to comply with the *Act* with respect to belongings of the tenants stored in the rental unit or other areas of the rental property.

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: October 26, 2016

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Residential Tenancy Branch