



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD  
                                 MT, CNR

### 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 and a monetary order for unpaid rent or utilities and for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit. The tenant has applied for more time than prescribed to dispute a notice to end the tenancy and for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

Both landlords and the tenant attended the hearing and each gave affirmed testimony. The tenant was accompanied by 2 support persons who did not testify or take part in the hearing. The parties agreed that all evidence has been exchanged, and the parties were given the opportunity to question each other. All evidence and testimony provided is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Should the tenant be granted more time than prescribed to dispute a notice to end the tenancy?
- 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?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

## Background and Evidence

**The first landlord** (BWT) testified that this month-to-month tenancy began on January 1, 2012 and the tenant still lives in the rental unit. Rent in the amount of \$900.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is the upper level of a house, and the lower level was tenanted, but is currently vacant. A copy of the tenancy agreement has been provided.

The landlord further testified that the landlords do not reside in the same community as the rental unit, and had 3 different property managers or property management companies manage the tenancy. However, the landlords have recently received an email from the most recent property manager advising that she can no longer deal with the tenant, and the landlords now manage the rental property.

The tenant has continuously fallen into arrears of rent and currently owes \$5,110.00 to the landlords. A government Ministry pays \$450.00 of the tenant's rent each month, and the balance is to be paid by the tenant, but the tenant has not always had a roommate and the landlords can no longer afford to support the tenant's shortfall. The landlords have provided a Direct Request Worksheet showing a balance outstanding for rent of \$4,550.00 to the end of September, 2016. Also provided is a spreadsheet showing a balance outstanding \$3,760.00 also to the end of September, and shows that the landlords concede a credit after receiving information from the tenant.

On September 16, 2016 the landlords served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail. A copy has been provided and it is dated September 16, 2016 and contains an effective date of vacancy of October 7, 2016 for unpaid rent in the amount of \$4,550.00 that was due on September 1, 2016.

The parties had been to Arbitration in September during which the Arbitrator told the tenant to pay the rent. The next day the tenant paid \$450.00 of the \$900.00 rent that was due for September, 2016. The tenant also paid \$450.00 for October, 2016 but no rent for November, 2016. The landlord provided the tenant with the landlords' banking information around mid-October so the tenant knew how to pay rent before the property manager left.

**The second landlord** (HAT) testified that the landlords have seen the tenant's evidence, including the Ministry print-out and receipts. There were times the property manager didn't pay the landlords, but that has been recognized and accounted for in the landlords' spreadsheet

The landlord has no knowledge of any agreement made with any of the property managers to exchange cleaning services for half a month's rent.

**The tenant** testified that there have been 7 property managers for the rental unit, and on 2 occasions the tenant cleaned the lower level in exchange for half a month's rent. The unit cleaned was in a terrible mess with used needles and garbage. The tenant believes the unit is a mess again and there may even be food rotting down there. Tenants in that unit moved out on September 20, 2016.

The tenant does not feel that \$5,110.00 is owed for rent but does agree that there are rental arrears. The tenant has provided copies of receipts signed by the previous property manager as well as a Ministry print-out showing that the property manager was paid \$450.00 each month from January to August, 2016.

The tenant seeks an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

### Analysis

The *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full, in which case the notice is of no effect, or to dispute it within that 5 day period. In this case, the landlord testified that the tenant was served by registered mail on September 16, 2016, which is deemed to have been served 5 days later, or September 21, 2016. The tenant then had until September 26, 2016 to pay the rent or dispute the notice. The tenant disputed the notice on September 23, 2016, which I find is within the time prescribed, and no further time is required.

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*. 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 testified that she has the money to pay the rent for this month, however has not yet done so and today is the 17<sup>th</sup> of the month. The tenant does not deny that rent remains unpaid, and therefore, I find that the landlords are entitled to an Order of Possession. The effective date of vacancy has passed, and in order to prevent the landlords from incurring more expense by not being able to re-rent, I grant the Order of Possession on 2 days notice to the tenant.

With respect to rental arrears, the second landlord explained how the amount of money claimed has been calculated. She testified that the landlords' spreadsheet does not show a payment of \$450.00 for August, 2016, but concedes that, and reducing the claim accordingly, the landlords are owed \$5,110.00 to the end of November. The tenant disputes that the arrears are that much.

I have reviewed the evidentiary material of the parties, including the receipts, Ministry print-out and ledgers/spreadsheets. There is no evidence before me of an opportunity for the tenant to pay half a month's rent for 2 months in exchange for cleaning services, and the landlords deny any knowledge of that. However, there also is no dispute that some of the evidence provided by the tenant show payments that the landlords didn't receive. That is also corroborated by the Ministry print-out which shows that the landlords' property manager received \$450.00 each month from January through August, 2016. The landlords' spreadsheet shows how payments were made, either in cash, by the Ministry and by e-transfer. The evidence combined shows that:

Month (2016)	Description	Rent Due	Rent Paid	Balance Due
January	Ministry Paid	\$900.00	\$450.00	\$ 450.00
February	Ministry Paid	900.00	450.00	900.00
March	Ministry & Cash	900.00	450.00	1,350.00
March	Cash		340.00	1,010.00
April	Ministry Paid	900.00	450.00	1,460.00
April	e-Transfer		400.00	1,060.00
May	Ministry Paid	900.00	450.00	1,510.00
June	Ministry Paid	900.00	450.00	1,960.00
July	Ministry Paid	900.00	450.00	2,410.00
August	Ministry Paid	900.00	450.00	2,860.00
September	Cash payment	900.00	450.00	3,310.00
October	e-Transfer	900.00	450.00	3,760.00
November	No Payment	900.00		4,660.00

I am satisfied that the landlords have established the claim of \$4,660.00.

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

I order the landlords to keep the \$450.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords for the difference in the amount of \$4,310.00.

### 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 tenant.

I order the landlords to keep the \$450.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord's as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,310.00.

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: November 18, 2016

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Residential Tenancy Branch