



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF, CNR, MT,

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting an order of possession due to unpaid rent; a monetary order to recover unpaid rent and /or utilities; and to recover the cost of the filing fee.

The Tenant filed an Application requesting more time to make an application to cancel a notice to end tenancy; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and to recover the cost of the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant testified that they moved out of the rental unit on December 1, 2016.

Section 44 of the Act, states that a tenancy ends if the Tenant vacates or abandons the rental unit.

Since the Tenant has moved out of the rental unit prior to this hearing, I find that pursuant to section 44 of the Act, the tenancy has ended. Accordingly, the Tenant's Application to Cancel a Notice to End Tenancy is no longer required and is dismissed.

Even though the Tenants have moved out of the unit, the Landlord requested an order of possession for the rental unit. The Landlords testified that the Tenants have rented the lower part of the rental unit to other occupants and the Landlord does not have a tenancy agreement or receive rent from the occupants.

The Tenant testified that the Landlord gave them permission to rent out part of the rental unit to other people to help pay the rent. The Tenant testified that some of the people who rented did not pay him rent.

The Landlord provided a copy of an email from the Tenants where they explain why they are late with rent and indicate that their tenants moved out and never paid them rent.

The Landlord responded that the Tenant never asked permission prior to renting out part of the rental unit. The Landlords testified that the Tenant told them after the fact that their mother had moved in to help the Tenants pay the rent.

The Landlords testified that they do not know the people currently living in the rental unit and they do not have a tenancy agreement with them. They testified that the Tenant was not acting as their agent by renting part of the unit out to other Tenants.

The Landlord provided a copy of a residential tenancy agreement between the Landlords and the Tenants. The tenancy agreement does not name any other parties. The tenancy agreement indicates the agreement covers the entire rental unit, not an upper or lower suite. The Tenancy agreement states that the Tenant may assign or sublet the rental unit to another person with the written consent of the Landlord.

There is no evidence before me of written consent from the Landlord allowing the Tenants to sublet.

There is no documentary evidence before me that the Tenants were acting as the Landlords agent by renting out the lower suite on behalf of the Landlord.

Based on the evidence and testimony of the parties, and on the balance of probabilities, I find that the Landlords do not have tenancy agreement with the occupants that are

residing in the lower suite. I find that the Tenants were not acting as an agent for the Landlords. The occupants may have had a tenancy agreement with the Tenants, but the tenancy for those occupants ended when the Tenants chose to move out of the rental unit, after receiving a 10 Day Notice to End Tenancy for unpaid rent.

### Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Parties testified that the tenancy began in July 2012, and is currently a one year fixed term tenancy to continue until July 31, 2017. Rent in the amount of \$1,700.00 is due on the first day of the month. The Tenant paid the Landlord a security deposit of \$850.00 and a pet damage deposit of \$450.00.

The Landlord testified that the Tenant was not paying the rent when it was due under the tenancy agreement.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 12, 2016, ("the 10 Day Notice") The Landlord testified that the Tenant was served with the 10 Day Notice by mail on October 13, 2016. The Notice states that the Tenant has failed to pay rent in the amount of \$2,055.00 which was due on October 1, 2016.

The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

On October 21, 2016, The Tenant made Application for Dispute Resolution to cancel the 10 Day Notice.

The Tenant moved out of the rental unit on December 1, prior to the hearing. The Tenant testified that he does owe the Landlord unpaid rent.

The Landlord testified that the Tenant owes the following amounts of rent:

<u>Month</u>	<u>Owing</u>	<u>Late Charge</u>
August 2015	\$850.00	\$30.00
January 2016	\$250.00	\$30.00
February 2016	\$325.00	\$30.00
May 2016	\$50.00	\$30.00
October 2016	\$600.00	\$50.00
November 2016	\$1700.00	\$50.00
December 2016	\$1700.00	\$50.00

The Landlord testified that the Tenant paid \$300.00 towards the rental arrears listed above.

The Landlord provided a copy of an email sent to the Tenants in February 2016 where the Landlord states the Tenants owe \$650.00 for last August. The Landlord provided documentary evidence of a banking record transaction log showing the transfer deposits the Landlord received for rent.

The Landlord testified that the tenancy agreement permits the Landlord to charge a late payment fee. The Landlord provided a copy of the tenancy agreement that states the Tenants agree to pay a \$30.00 fee for late rental payment.

In addition to the late rental fees listed above, the Landlords are claiming three more late payment charges for April 2016; June 2016; and September 2016, where the rent was paid late.

In response to the Landlord's claim, the Tenant testified that some of the amounts of unpaid rent the Landlord is claiming is inaccurate. The Tenant testified that he did not have enough time to gather the documentary evidence in support of his testimony. The Tenant agreed with the following amounts of rent owing:

<u>Month</u>	<u>Rent Owing</u>
January 2016	\$250.00
February 2016	\$325.00
November 2016	\$1700.00
December 2016	\$1700.00

The Tenant testified that he is positive he paid October 2016 rent in full. He testified that he paid it through a bank e-transfer. The Tenant did not provide any documentary evidence to support his testimony that he paid October 2016 rent.

With respect to the late payment charges, the Tenant testified that he does not agree with the charges for late rent because he had a verbal agreement with the Landlord that he could pay late. The Tenant testified that he did pay rent on time for September 2016.

The Landlord responded by testifying that the Landlord received \$1,000.00 from the Tenants on October 11, 2016, and further \$100.00 on October 12, 2016.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find that the Tenant did not pay the outstanding rent within five days of receiving the Notice. The Tenant acknowledges that he owes the Landlord rent money.

The Tenant's application to cancel the 10 Day Notice is dismissed.

Under section 55 of the Act, when a Tenants application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the in addition to the amounts the Tenant agreed he owes for unpaid rent, the Landlord's evidence establishes that the Tenant owes \$850.00 for unpaid rent for the month of August 2015, and \$600.00 for October 2016.

The Landlords have established that the Tenants owe \$5,475.00 for unpaid rent. The Landlords testified the Tenants paid \$300.00 towards this amount. I grant the Landlords \$5,165.00 for unpaid rent.

Section 7 of the Residential Tenancy Regulation states that a Landlord may only charge a late payment fee of not more than \$25.00.

The Landlords evidence establishes that the Tenant was late paying the rent 10 times. The Landlords documentary evidence supports the Landlords testimony that rent was paid late for September 2016. I find that the Tenancy agreement between the parties allowed for late payment fee. I grant the Landlord \$250.00 for 10 late rent payments.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$5,515.00 comprised of \$5,165.00 in unpaid rent for the above mentioned dates; \$250.00 for late fees; and the \$100.00 fee paid by the Landlord for this hearing.

This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

### Conclusion

The Tenants failed to pay the rent within 5 days of receiving the 10 Day notice to End Tenancy for Unpaid Rent. The Tenants Application is dismissed and the Landlords are granted an order of possession effective 2 (two) days, after service on the Tenant and Occupants.

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: December 15, 2016

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Residential Tenancy Branch