



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR, MNR (Landlords' Application)  
CNR, CNL, FF (Tenants' Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Landlords and the Tenants.

The Landlords applied on October 27, 2016 for an Order of Possession and a Monetary Order for unpaid rent. The Tenants applied on October 13, 2016 to dispute a notice to end tenancy for the Landlord's use of the property and to recover their filing fee from the Landlords. The Tenants amended their Application on October 25, 2016 to dispute a notice to end tenancy for unpaid rent.

Both Landlords and the female Tenant appeared for the hearing and provided affirmed testimony. The parties confirmed receipt of each other's Application and each other's documentary evidence which was served prior to the hearing by registered mail.

### Preliminary Issues

At the outset of the hearing, the parties confirmed that the Tenant had accepted the notice to end tenancy for the Landlord's use of the property and had moved out of the rental unit pursuant to that notice to end tenancy. The Landlords confirmed that they had received vacant possession of the rental unit. Therefore, I dismissed the Tenants' Application in its entirety and I dismissed the Landlords' Application for an Order of Possession because these issues are now moot as the tenancy has ended. Therefore, the only matter that was left for me to deal with in this hearing was the Landlords' monetary claim for unpaid rent.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided in relation to the issues to be decided.

### Issue(s) to be Decided

Have the Landlords met the burden to prove the Tenants failed to pay rent for October and November 2016?

### Background and Evidence

Both parties agreed that this tenancy started in June 2016. The male Landlord testified that there was a written tenancy agreement between the Landlords and a company Tenant who paid rent under that written agreement directly to the Landlords on behalf of the Tenants named in this dispute. This tenancy agreement was not provided into evidence. The male Landlord testified that rent for that agreement was \$2,500.00 payable on the first day of each month. No security deposit was requested.

The Landlord then entered into a signed tenancy agreement directly with the Tenants for a tenancy to start on March 1, 2016 with rent payable in the amount of \$3,000.00 on the first day of each month. That tenancy agreement was provided into evidence and the Tenant did not dispute this.

The parties agreed that the Tenant had been served with a 2 Month Notice to End Tenancy for the Landlord's Use of Property (the "2 Month Notice") on September 28, 2016. The parties also agreed that the Tenant was served with a 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") on October 18, 2016.

The male Landlord explained that after serving the Tenant with the 2 Month Notice, the Tenant failed to pay rent for October and November 2016. The Landlords acknowledged that they had to pay the Tenants one month's rent as compensation but did not know how this was to be paid. The Landlords seek to claim the unpaid rent amount for October 2016 for which they served the Tenants with the 10 Day Notice.

The Tenant responded testifying that they had paid rent to the Landlords in cash on October 2, 2016 but that the Landlords did not give them a receipt for this payment. The Tenant testified that the Landlords have always insisted that the Tenants pay rent by cash but despite repeated requests for rent receipts during this tenancy, the Landlords failed to issue them with any.

The male Landlord confirmed that from around May 2012 he had insisted that the Tenants pay their rent by cheque but to avoid bounced cheque payments he decided to accept rent in the form of cash instead. The male Landlord confirmed that he had not issued the Tenants with any rent receipts from May 2012 to March 2016 because the Tenants did not ask for one. The Landlord testified that he had issued the Tenants with

rent receipts for cash payments they made for the written tenancy agreement from March 2016 onwards. The male Landlord explained that he had these rent receipts before him at the time of this hearing. However, the Landlords did not serve this evidence either to the Tenant or to the Residential Tenancy Branch prior to this hearing.

The Tenant disputed the male Landlord's testimony and submitted that if the Landlords had rent receipts in front of them, they were likely generated after the fact. The Tenant also argued that this was not evidence that the Tenants were actually served with them at the time rent was paid.

The Tenant explained that she had amended her Application to dispute the 10 Day Notice on which she wrote that she had paid rent for October 2016 but had not been provided with a receipt for that payment or for any cash rent payments the Tenants had made during this tenancy. Therefore, it was incumbent on the Landlords to have provided the rent receipts they claimed to have before them into evidence prior to the hearing so they could have examined them and responded accordingly. The Tenant confirmed that they had not paid rent for November 2016 pursuant to their compensation under the 2 Month Notice.

The male Landlord testified that the Tenants regularly paid rent late during this tenancy and disputed the Tenants testimony that they paid rent on October 2, 2016 because it was regularly paid on the middle of each month. Therefore, it is highly unlikely that the Tenants would have paid it on October 2, 2016 and this was the reason why the Landlords served the Tenants with a 10 Day Notice on October 18, 2016, namely the middle of the month. The Landlords insisted that the Tenants were getting away with paying rent for October 2016 by claiming they paid it and showing no evidence of payment made.

### Analysis

In relation to the nonpayment of rent by the Tenants for November 2016, I find the Tenants had authority under Section 51(1.1) of the *Residential Tenancy Act* (the "Act") to withhold rent to receive their compensation payable under the 2 Month Notice. Therefore, the Landlords' monetary claim for November 2016 rent is dismissed.

When a party makes an Application against the other, the applicant bears the burden of proof on the balance of probabilities, to prove their claim. If a party's evidence is disputed by the other party, then the party making the claim must be able to corroborate or support their evidence by other means that would give merit to their claim.

When the only evidence a party relies upon consists of oral evidence provided during a hearing and this is disputed by the opposing party with an equally probable version of the events, this results in one party's word against the others; without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim must fail. As explained during the hearing, this does not necessarily mean that one party's word is believed over the other's, but simply that in the interest of natural justice, a party's disputed and unsubstantiated testimony alone is not sufficient to support a decision in favour of the applicant.

As the Landlords make a monetary claim against the Tenants for unpaid rent, I find that in this case, it is the Landlords that bear the burden of proof. Therefore, I make the following findings based on the evidence before me.

Section 26(2) of the Act provides that if a tenant pays their rent in cash, the landlord **must** provide them with a receipt. In this case, the Landlords failed to provide rent receipts to the Tenants for cash payments they made for four years of this tenancy. The Landlords had the responsibility to provide the rent receipts and this duty did not rely on a requirement by the Tenants to make a request for receipts.

The Landlords testified that they provided the Tenants with rent receipts from March 2016 onwards and that they had this evidence before them. The Tenant disputed this evidence and stated that the Landlords had manufactured the rent receipts which they claimed they had issued to the Tenants. The Landlords failed to provide these into evidence prior to this hearing. In this respect, I concur with the Tenant in that the Tenants had put the Landlords on notice through their amended Application that the Landlords had never provided them with rent receipts during this tenancy. Therefore, if the Landlords had provided rent receipts to the Tenants then it would have been incumbent and essential for this to have been provided into evidence and served to the Tenants prior to this hearing to allow them to respond accordingly.

Based on the foregoing and on the balance of probabilities, I am only able to conclude that the Landlords have failed to meet the burden to prove the Tenants failed to pay rent. I find that making a claim during a hearing that the Landlords were in possession of rent receipts is not sufficient evidence to show that these were issued to the Tenants at the time the rent payments were made. I find the Tenants have provided an equally probable version of the events and the conflicting evidence of both parties only allows me to conclude that in the absence of any supporting or corroborating evidence before me, the Landlords have failed to meet the burden to prove their claim. Therefore, their monetary claim for unpaid October 2016 rent is dismissed.

Conclusion

The tenancy has ended and the Landlords have failed to prove that the Tenants owe rent. Therefore, both parties' Applications are dismissed without leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 06, 2016

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Residential Tenancy Branch