



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNR

For the landlords – OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for unpaid rent. The landlords applied for Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords attended the conference call hearing and gave sworn testimony. The landlords and tenant TB provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. 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.

### Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the 10 Day Notice to End Tenancy?
- Are the landlords entitled to an Order of Possession?
- Are the landlords entitled to a Monetary Order to recover unpaid rent?

### Background and Evidence

The parties agreed that this fixed term tenancy for the co-tenants started on September 01, 2016. A copy of the tenancy agreement has been provided in documentary evidence and shows that at the end of the fixed term at least one tenant and one landlord initialed the box to indicate that the tenancy will end at the end on January 31, 2017. Rent for this unit is \$1,600.00 per month due on the 1<sup>st</sup> of each month.

The landlords testified that the tenants failed to pay all the rent due on December 01, 2016 leaving an unpaid balance of \$1,600.00. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on December 04, 2016. This was posted in the tenants' mail slot and was deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply or Dispute Resolution or the tenancy would end on December 14, 2016. The tenants did not pay the outstanding rent but TB did file an application to dispute the Notice. Since that time the tenants have also failed to pay rent for January, 2017 of \$1,600.00. The total amount of unpaid rent is now \$3,200.00.

The landlords seek a Monetary Order to recover the unpaid rent of \$3,200.00 and the filing fee of \$100.00 and have also applied for an Order of Possession to take effect as soon as possible. The landlords testified that on the Monetary Order Work Sheet they had added the security deposit to the claim in error and understand that they have not applied to retain the security deposit on their application.

The tenants testified that the tenant JP had vacated the rental unit in November but agreed that they do not have anything in writing from the landlords to remove JP from the tenancy agreement. The tenant TB testified that she withheld the rent in lieu of the fact that the landlords are going to tear the house down and in the meantime they intend to move into the rental unit without giving the tenants any notice. TB testified that when the tenancy agreement was signed she was in hospital and the landlord JN later brought a page of the tenancy agreement for TB to sign but TB did not know that they had to vacate the unit at the end of the fixed term. TB does not dispute the landlords' claim that rent was not paid for December or January and testified that she vacated the rental unit on January 01, 2017. JP testified that they have not yet returned the keys to the rental unit.

JN testified that TB was still at the rental unit last Friday and does not think that she has fully vacated the rental unit.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied from the evidence before me that there is outstanding rent for December, 2016 and January, 2017 of **\$3,200.00**. Consequently, it is my decision that the landlords are entitled to recover this amount and will receive a Monetary Order pursuant to s. 67 of the *Act*.

To address the tenant's arguments that she did not need to pay the rent as the landlords were going to tear down the unit and was not aware that this was a fixed term tenancy. I refer the tenants to the s. 51 of the *Act* which states:

**51** (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

The landlords did not serve the tenants with a Two Month Notice to End Tenancy under s. 49 of the *Act* and therefore the tenants would not be entitled to withhold the last month's rent. Further to this once a tenancy is legally ended a landlord may do whatever they choose to do with their rental unit and this is no longer any concern of the tenants as their tenancy would have ended. Therefore if the landlords choose to move back into the rental unit or tear down the unit after January 31, 2016 then they may do so without compensating the tenants.

I refer the tenants to the Residential Tenancy Policy Guidelines #13 which provided guidance on co-tenancies and states, in part, that:

*Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.*

*Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or*

*any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.*

*Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.*

Consequently I find JP did not have an agreement in writing with the landlords to end his tenancy and therefore JP remains as a co-tenant with TB and must continue to meet his obligations under the tenancy agreement.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was served to the tenants by placing it in their mail box it was deemed served three days after posting on December 07, 2016. The effective date of the Notice is amended to December 17, 2016 pursuant to s. 53 of the *Act*. The tenants did not pay all the outstanding rent within five days.

Based on the foregoing, I find that the landlords have established their claim for an Order of Possession pursuant to s. 55 of the *Act*. The Order will be effective two days after service pursuant to s. 55 of the *Act*. If the landlords find the tenants have fully vacated the rental unit then the landlords are not required to serve this Notice upon the tenant's. As the landlord has been successful in this matter, the landlords are also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The matter of the security deposit will be dealt with at the end of the tenancy and has not been heard today.

### Conclusion

The tenant's application is dismissed without leave to reapply.

I HEREBY FIND in favor of the landlords' amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$3,300.00.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenants; if the tenants fail to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlords effective two days after service upon the tenants. This Order must be served on the tenants; if the tenants fail to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: January 11, 2017

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Residential Tenancy Branch