



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, CNR, DRI, MNDC, MNSD, RPP

### Introduction

The landlord applies for an order of possession pursuant to a claimed notice to end the tenancy for non-payment of rent. She also seeks a monetary award for unpaid rent.

The tenants apply to cancel the notice to end tenancy. They also seek a monetary award for the value of goods stolen from the rental unit. They also seek unspecified relief claiming the rental unit is an illegal suite. They also seek to dispute a rent increase.

The tenant Ms. L. did not attend the hearing. The tenant Mr. K. confirmed she was aware of this proceeding.

All parties attending the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Neither side has filed a copy of the alleged notice to end tenancy for unpaid rent though they are required to do so by Rule 2.5 of the Rules of Procedure. As a result, the landlord's claim for an order of possession and the tenants' claim to cancel the notice are both dismissed with leave to re-apply, subject to relevant time limitations.

### Issue(s) to be Decided

Is the landlord owed rent? Are the tenants entitled to damages for stolen property or relief relating to an "illegal suite?"

### Background and Evidence

The rental unit is a one bedroom basement suite in the landlord's house. There is a second rental unit that the landlord rents out to others.

There is no written tenancy agreement, though s. 13 of the *Residential Tenancy Act* (the "Act") mandates that a landlord prepare one.

The parties agree that this tenancy started on February 1, 2016. The landlord says the monthly rent is \$950.00. The attending tenant says its \$900.00.

The landlord says she holds a \$475.00 security deposit. The attending tenant says it's \$450.00. They agree there is no pet damage deposit.

The landlord testifies that in June 2016 she verbally imposed a \$25.00 rent increase.

She says the tenants paid rent in cash. One tenant regularly paid \$475.00 and the other, Mr. K. paid cash in dribs and drabs.

She says that in June or July the tenant Ms. L. requested that she pay rent on the 7<sup>th</sup> of each month to facilitate her paydays. The landlord says she agreed but charged an additional \$25.00 per month because that is what the landlord's mortgage company would charge for later mortgage payments.

The tenant Mr. K. testifies that on an undisclosed date the landlord's husband came to the property with a friend and the friend broke in to the rental unit, stealing various items. Some of the items were later retrieved with the help of the police from a "crack shack."

He says the dishwasher does not work, there is no heat, a window is broken and the landlord tacked \$50.00 onto rent for a new dishwasher. He says the landlord does not give receipts for rent.

He says there was an agreement not to pay August rent until the stolen property had been returned.

The landlord says the tenants left a window open and that is how the thief got in. She says her husband does not live there with her.

### Analysis

The landlord has put herself in a difficult position by not preparing a written tenancy agreement between the parties. Without it, and without some objective corroboration in the form of rent receipts or rent cheque deposit evidence, the determination of amount of rent falls to the testimony of the parties.

I find that the rent was \$900.00 at the start of the tenancy in February 2016. There was no mutual agreement to raise that rent. The law (s. 42 of the *Act*) prohibits a landlord from imposing a rent increase for twelve months after the start of a tenancy. I find that the rent did not increase. It remains \$900.00 per month.

I find that the rent is due on the first of each month. While there may have been an agreement with Ms. L. for her to pay her portion on the 7<sup>th</sup> of each month, that is not an agreement that I consider to have permanently varied the original terms.

I dismiss the landlord's claim for a monetary award for unpaid rent but with leave to re-apply. Her calculations were based on a invalid rent increase. As pointed out at hearing, it is a tenant's obligation to prove payment of rent. If that payment is by cash, it is the tenant's responsibility to ensure he gets a receipt for payment. It is the landlord's statutory duty to provide one.

The question of whether or not the rental unit is an illegal suite was not proved by any evidence at this hearing. Assuming that "illegal" means contrary to a local government zoning bylaw, there is no evidence that such a status is currently threatening the tenants' right to quiet enjoyment or has somehow caused them loss.

I dismiss the tenants' claim for damages for stolen property. First, there is no evidence of what was taken nor of its value. Second, the fact that a friend of the landlord's husband may have been the perpetrator of the theft does not make the landlord responsible. There is no evidence that she took part in or was an accessory to the theft.

I dismiss the tenants' claim regarding the dishwasher, the broken window and the complaint about heat. None of these claims were raised by the tenants' application or otherwise in advance of the hearing. It would not be fair to require the landlord to defend herself against these claims without forewarning. I grant leave to re-apply if the tenants' wish to pursue them.

Conclusion

The landlord's claim for an order of possession and a monetary award for unpaid rent are dismissed with leave to re-apply.

The tenants' claim for an order cancelling the ten day Notice is dismissed with leave to re-apply subject to any time limitation.

The tenants' claim for a monetary award for damages is dismissed.

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*.

I make no order for recovery of any filing fee.

Dated: January 18, 2017

---

Residential Tenancy Branch