



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR  
                                 CNR

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities, and the tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlord and both tenants attended the hearing, and the landlord and one of the tenants gave affirmed testimony. The parties were permitted to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled for compensation owed to the tenants?

### Background and Evidence

**The landlord** testified that this fixed term tenancy began on February 1, 2016, although the landlord permitted the tenants to move in several days earlier without paying rent for those days. A copy of the tenancy agreement has been provided and it states that the tenancy ends on the 31<sup>st</sup> day of January, 2017 at which time the tenancy ends and the tenants must vacate the rental unit, which is initialled by a landlord and 2 tenants.

Rent in the amount of \$1,200.00 per month is payable on the 1<sup>st</sup> day of each month. During the tenancy the landlord collected a security deposit in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenants didn't pay rent on the 1<sup>st</sup> of January, 2017 and the landlord sent a text message to the tenants on January 2, 2017 asking if rent would be paid, which was the method of communication that the parties commonly used. Upon receiving no response, the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated January 2, 2017 and contains an effective date of vacancy of January 11, 2017 for unpaid rent in the amount of \$1,200.00 that was due on January 1, 2017. The landlord put a copy in the mailbox of the rental unit as well as posting a copy on the door. The tenants have not paid any rent since the issuance of the notice.

**The tenant** testified that at the beginning of the tenancy the landlord wanted a 1 year lease, and the tenant was hopeful in getting a transfer with her employer to another City. The landlord said that if that were to happen, the landlord would agree to terminate the lease early.

At the beginning of November, 2016 the landlord texted the tenants stating that the landlord was not going to renew the lease and that the tenants were receiving lots of notice, but the tenant hadn't been transferred. The tenant took it as a 2 Month Notice to End Tenancy for Landlord's Use of Property, and asked the landlord if she was going to serve one. The landlord said she would be dating it November 1, 2016. The landlord didn't actually serve one, but where a landlord gives 2 months notice to end a tenancy, the landlord must reimburse the tenant the equivalent of 1 month's rent, so the tenants do not feel that the landlord is entitled to rent for January, 2017.

The tenant has now received an Interim transfer and the tenants are moving out tomorrow.

### Analysis

In order to be effective, a notice to end a tenancy of any kind when given by a landlord must be in the approved form. Where a landlord gives a 2 Month Notice to End Tenancy for Landlord's Use of Property the landlord must provide the tenants with the equivalent of 1 month's rent as compensation. However, a landlord does not have to give a 2 Month Notice to End Tenancy for Landlord's Use of Property if a tenancy agreement specifies that the tenants must move out of the rental unit at the end of the fixed term.

In this case, the fixed term expires on January 31, 2017 and the landlord has not served a 2 Month Notice to End Tenancy for Landlord's Use of Property. Therefore, the tenants are not entitled to compensation.

Having found that the tenants are not entitled to compensation, the tenants are required to pay the rent. The tenants have not paid the rent, and therefore, I find that the landlord is entitled to a monetary order in the amount of \$1,200.00.

The landlord has issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the tenants have disputed it. Having found that the tenants have not paid the rent and had no legal right to withhold it, I dismiss the tenants' application to cancel it.

Further, the *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. 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*. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenants.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

At the end of the hearing, the parties agreed that the landlord has the tenants' forwarding address which satisfies the requirement of providing same under Section 38 of the *Act*.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,300.00.

I further order, by consent, that the landlord has the tenants' forwarding address as provided in this hearing, satisfying the requirement of providing same to the landlord under Section 38 of the *Residential Tenancy Act*.

This order is final and binding and may be enforced.

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 27, 2017

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Residential Tenancy Branch