



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF  
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, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application.. 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 each gave affirmed testimony. The landlord was also represented by an agent who gave affirmed testimony. The landlord and the tenants also each called 1 witness who each gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses.

At the outset of the hearing one of the tenants asked for a “stay of proceedings,” indicating that the tenants did not have ample time to prepare a response to the landlord’s evidentiary material. The tenant asked to adjourn the hearing for 3 days, which was opposed by the landlord. The tenants’ application was filed on January 18, 2017 and the landlords’ application was filed on January 19, 2017. Both parties have received evidentiary material from the other party, and I found that the parties each had ample time to provide evidence and the hearing proceeded.

All testimony and evidence provided 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 given in accordance with the *Residential Tenancy Act*?

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord's agent** testified that this 1 year fixed term tenancy began on July 15, 2016 with one of the tenants and his girlfriend and his father. The girlfriend and the tenant's father moved out on November 30, 2016 and a new tenancy agreement was prepared showing the tenant remaining and another tenant as a "guest." A copy of the tenancy agreement has been provided. The rental unit is a single family dwelling.

Rent in the amount of \$1,450.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$725.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenants are currently in arrears of rent the sum of \$2,200.00, being \$750.00 remaining outstanding for January, 2017 and no rent has been paid for February, 2017. The tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to one of the tenants on January 10, 2017. A copy has been provided and it is dated January 10, 2017 and contains an effective date of vacancy of January 20, 2017 for unpaid rent in the amount of \$1,450.00 that was due on January 1, 2017 in addition to \$750.00 outstanding. The tenants have not paid the rent and the whole sum remains due and owing to the landlord. The landlord seeks to keep the \$725.00 security deposit.

When asked about a pet damage deposit, the landlord's agent testified that if there was one, it would be the same amount as the security deposit, but the landlord's agent is not in possession of a receipt or any record of a pet damage deposit.

**The landlord's witness** testified that she deals with the landlord's deposits and monetary issues, and does not recall receiving or acknowledging a pet damage deposit for this rental unit.

The witness also testified that other than a partial payment in January, 2017, the tenants have not paid the rent in full and the witness is not aware of any negotiations between the parties about the payment of rent.

**The landlord** testified that the landlord only seeks the unpaid rent for January and February, 2017, as well as recovery of the \$100.00 filing fee and to keep the security deposit. Utilities are about to be disconnected because bills have not been paid by the tenants.

The landlord does not recall if a pet damage deposit was collected, but if it was, the landlord doesn't mind paying it back.

**The first tenant** (MW) testified that he needed help with the rent and the other tenant was going to pay. The tenant fell behind and the landlord was going to work with the tenant. The other tenant paid \$700.00 for rent on January 5, 2017. The tenant tried to contact the landlord, who replied that the balance could be paid on January 13, 2017, but instead, the landlord issued the notice to end the tenancy. Not knowing whether or not the landlord would honour the agreement, having given the notice, the tenant has not paid the balance of January's rent.

The other tenant moved out and took all of the tenant's documentation, so further evidence could not be provided for this hearing.

**The second tenant** (BS) testified that the landlord is not allowed to act as a real estate agent while being the landlord, and refers to an Addendum stating, "Tenants acknowledge that this is personal investment for (the landlord) and tenants are not allowed to discuss this – my Realty Company." Further, the landlord added late fees.

The tenant has not moved out; the other tenant has changed the locks to the rental unit forcing the tenant out. The landlord's keys won't work anymore.

**The tenants' witness** (RW) testified that he was originally on the lease as a tenant and was paying rent for the last 7 months or so. When they first moved in, the tenants paid half a month's rent of \$725.00 and a security deposit of \$725.00 but before they were allowed to move in, the tenants had to give the landlord 6 months post-dated cheques and the landlord demanded a \$725.00 pet deposit.

The original tenancy agreement was not signed by the landlord, but by the landlord's spouse who was the owner. Instead of dealing with the owner, the tenants were assaulted by an array of people from the landlord's real estate company. The tenants understood that the owner was the landlord, and respecting cleaning, electrical issues and repairs required but the tenants didn't know who the landlord was. The tenancy agreement was flawed.

Four cheques were cashed and utilities were paid. When the witness moved out at the end of November, 2016 and the second tenant moved in, she was supposed to pay half of the rent.

### Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the parties agree that only \$700.00 of the rent was paid for the month of January, 2017 and that no rent has been paid for February, 2017, leaving an additional \$1,450.00 outstanding.

I have reviewed the first tenancy agreement, which is between the landlord named in this dispute and the first 2 tenants (father and son). Portions of the agreement are not visible, however the tenant remaining sent the landlord a letter dated November 30, 2016 stating that the 2 other tenants had vacated and a new tenant is to be added to the tenancy agreement. It is addressed to the landlord and to the landlord's spouse and indicates that the tenant takes responsibility for the remainder of the tenancy. Where more than one person is named as a tenant on a tenancy agreement, all tenants are responsible for the payment of rent. Rent for January, 2017 still has not been paid in full and no rent has been paid for February. Therefore, I find that the tenants do not have a defence to the landlord's claim, and the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed.

The *Residential Tenancy Act* also 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*. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenants.

I am also satisfied that the landlord has established a monetary claim as against the tenants for unpaid rent totalling \$2,200.00.

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

The parties do not agree on whether or not the landlord collected a pet damage deposit. The *Act* requires a landlord to return a security deposit or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make a claim against the deposit(s) within that 15 day period. The tenants have 1 year from the end of the tenancy to provide the landlord with a forwarding address in writing, and I leave it to the parties to deal with the deposit(s) in accordance with the *Residential Tenancy Act*.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed without leave to reapply.

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 \$2,300.00.

I order the parties to deal with the security deposit and any pet damage deposit in accordance with 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: February 14, 2017

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Residential Tenancy Branch