



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR CNR LAT

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on January 24, 2017. The Tenant filed seeking more time to file his application to dispute a notice to end tenancy; to cancel a 10 Day Notice to end tenancy for unpaid rent; and an authorization for the Tenant to change the locks to the rental unit.

The hearing was conducted via teleconference and was attended by the Landlord, and the two brothers who were the Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The application for Dispute Resolution was filed listing only one applicant Tenant. The Landlord affirmed that both males who were in attendance at this hearing were Tenants; as per the subsequent tenancy agreement that was effective December 1, 2016. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The Landlord confirmed receipt of the application, notice of hearing documents, and evidence submitted by the Tenant. As such, I considered the submissions from the Tenant as evidence for this proceeding.

The Tenant clarified the spelling of his surname during the hearing. I noted that the Tenant's application listed his surname in handwriting that was hard to interpret. I also noted that the Tenant's surname had been spelled incorrectly on the Notice of Hearing Document issued by the Residential Tenancy Branch (RTB). Accordingly, the RTB record and the style of cause for this Decision were amended to reflect the Tenant's correct surname, pursuant to section 64(3)(c) of the Act.

The Tenants requested an adjournment and argued they were waiting for their legal counsel to be available. I heard the Tenants state two days before this hearing their mother had hired a lawyer from legal aid. They stated they knew only the Lawyer's first name and that he had helped his mother in a previous case. The Tenants stated that

they had attempted to contact the lawyer on numerous occasions and he never returned their calls. As such they were seeking an adjournment of at least two weeks.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) 6.4 provides that without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party.

The Landlord disputed the Tenants' request for an adjournment stating that request was unreasonable given that the Tenants have failed to pay rent for two months now, January and February 2017. I heard the Landlord state this process was started in January 2017 when he served the Tenants the Notice to end tenancy for \$1,250.00 unpaid rent and now the Tenants owe him two month's rent. The Landlord argued that he deserved to have a resolution today as he should not be expected to continue to go more time without the payment of rent.

After careful consideration of the above, I found there was insufficient evidence to prove that an adjournment would contribute to a fair resolution. The Tenants alleged their mother had hired a lawyer for them; however, there was insufficient evidence to support that submission. Furthermore, there was insufficient evidence to prove the Tenants sought the assistance from a lawyer or advocate within a reasonable period of time. The Tenants did not know the lawyer's name; had obviously not spoken with that lawyer; and simply argued the matters relating to the nonpayment of rent resulted from their mother no longer residing with them.

I find that an adjournment would only delay the eviction process and would be prejudicial to the Landlord. I accept the Landlord's submissions that the request for adjournment, at this time, could be considered the Tenants' attempt to delay this process. To expect the Landlord would have to do without the payment of yet another month's rent would be unreasonable. Accordingly, I refused the Tenants' request for an adjournment and proceeded with the hearing.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Did the Tenant file his application within the required timeframe?
2. Should the 10 Day Notice be upheld or cancelled?
3. Is the Tenant entitled to change the locks to the rental unit?

Background and Evidence

The Tenant submitted a copy of a fixed term tenancy agreement which listed himself and his mother as Tenants. That tenancy agreement indicated their tenancy commenced on July 1, 2016 and rent of \$1,250.00 was payable on the first of each month. On or around June 16, 2016 the Tenants paid \$625.00 as the security deposit.

I heard each Tenant and the Landlord confirm they entered into a subsequent written tenancy agreement which commenced on December 1, 2016 listing the two brothers as the Tenants. I heard the Tenants stated the new agreement stipulated the tenancy ended February 29, 2017 and that all three of them initialled the box beside the "ii" which stated the following:

*The tenancy ends and the tenant must move out of the residential unit. If you choose this option, both the landlord and tenant must initial in the boxes to the right.*

Both parties confirmed the new tenancy agreement required the Tenants to pay \$1,250.00 rent on the first of each month. Both parties confirmed the \$625.00 security deposit was transferred from the first tenancy to this subsequent tenancy agreement.

The Landlord testified that when January 2017 rent remained unpaid he personally served the Tenant, R. A-C., with a 10 Day Notice on January 21, 2017. That Notice listed \$1,250.00 rent was due on January 1, 2017 and listed an effective date of January 30, 2017.

Each Tenant argued they were both forced into signing the new tenancy agreement. I heard them state the Landlord refused to sign their "Intent to rent form" for income assistance until they signed the new tenancy agreement. They argued the Landlord refused to allow their mother to live in the rental unit and she had since been moved into a care facility.

The Tenant J.A. testified that he paid the Landlord \$525.00 on December 24, 2016 and the Landlord gave him a receipt for that payment. He did not have the receipt with him

during the hearing so he could not speak to what that receipt stated. J.A. confirmed he had not paid the Landlord any money in January or February 2017.

I heard the Tenant, R. A.-C., state that he did not pay the Landlord money for January or February 2017 rent. When I asked him why he had not paid rent the Tenant stated that he did not see any sense in paying the Landlord money when this would just result in an eviction.

The Tenants asserted they had a verbal agreement with the Landlord that they would not have to pay their rent until they sold their van.

The Landlord confirmed that he had entered into a “gentlemen’s agreement” with the Tenants that they could pay their rent when they received the money from selling the van as long as that payment was received by him on or before January 17, 2017. He stated that when he did not receive the rent payment by January 17, 2017, he determined that the van had not sold so he served the Tenants with the 10 Day Notice.

The Landlord stated that he wanted to work with the Tenants and wanted an affirmation from them that they would move out at the end of February 2017; based on their written tenancy agreement and their word. The Landlord submitted that he was seeking an Order of Possession effective February 28, 2017 and he would deal with collecting the unpaid rent directly with the Tenants.

The Tenants argued they were not able to pay their rent because their mother was not allowed to reside with them and the Landlord refused their request to rent the living room out to a third tenant.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on January 21, 2017 and filed his application to dispute that Notice, 3 days later on January 24, 2017. As such, I find the Tenant filed his application within the required timeframe; therefore, his request for more time to file the application is moot.

Subsection (2) of Section 53 states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is

deemed to be the earliest date that complies with the section. In this case the effective date of the Notice automatically corrected to February 1, 2017, pursuant to section 53(2) of the *Act*.

Under section 26 of the *Act* a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this *Act*. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the *Act*.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

In this case the undisputed evidence was the parties had a verbal agreement the Tenants would pay their rent when the van sold. However, the Landlord submitted the rent was required to be paid no later than January 17, 2017; regardless of whether the van sold. In absence of a written agreement, I find there was insufficient evidence to prove the Tenants had a legal right to withhold their January or February 2017 rent.

Based on the Tenant's own submission they chose not to pay their rent for January and February 2017; as they were fully aware that this matter may result in an eviction. Furthermore, there is a heavy burden on the Tenants to show that there was coercion or duress forcing an agreement.

In this case I find the tenants have not established, on a balance of probabilities, that there was coercion or duress to have forced them into signing the new tenancy agreement. At best it can be said that the Landlord threatened to evict them or refused to sign their income assistance form if they did not sign. I find that the Tenants were aware of the terms of the agreement they were entering into and had they made an effort to inquire of their legal rights they would have quickly determined that the continuation of the tenancy was not in immediate jeopardy and then they might not have agreed to the final agreement; however, a failure to determine one's legal rights beforehand is not a defence against enforcement of the terms of an otherwise legal agreement.

Based on the above, I find the Tenants were well aware they were agreeing to a new fixed term tenancy agreement that required them to move out on the last day of February 2017. I further find the date listed as February 29, 2017 was a clerical error which was the result of the parties not knowing that 2017 was not a leap year.

Based on the totality of the evidence before me, I find the Tenants submitted insufficient evidence to prove the 10 Day Notice issued January 21, 2017 should be cancelled. As such I dismiss the Tenant's application in its entirety.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Landlord has been issued an Order of Possession effective **February 28, 2017 at 1:00 p.m., after service upon the Tenant**. In the event the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

### Conclusion

The Tenant was not successful with his application and it was dismissed, without leave to reapply. The Landlord was issued an Order of Possession as outlined above.

This decision is final, legally binding, and 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 23, 2017

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Residential Tenancy Branch