



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL MNRPL-S OPR  
                              CNR FFT

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied as against 3 tenants (RPL and SLS and DR) 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 security deposit or pet damage deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants' application is filed by tenants (SLS and DR) seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities and to recover the filing fee from the landlord.

The landlord was represented at the hearing by an agent, who gave affirmed testimony, and called one witness who gave affirmed testimony. The landlord attended the hearing late, and also gave affirmed testimony. The two tenants who applied for dispute resolution (SLS and DR) also attended the hearing, and each gave affirmed testimony. The tenants and the landlord's agent were given the opportunity to question each other, the landlord and the landlord's witness.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

The tenant who has not applied for dispute resolution (RPL) has not joined the hearing, and the landlord testified that all 3 tenants were served with notice of this hearing and the landlord's Hearing Package on November 24, 2017 by registered mail. The landlord has provided copies of 3 Registered Domestic Customer Receipts stamped with that date by Canada Post, and I am satisfied that the tenants named in the landlord's application have been served in accordance with the *Residential Tenancy Act*.

### 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*, or should it 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 security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on October 1, 2016 and the tenants still reside in the rental unit. Rent in the amount of \$1,150.00 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 \$575.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling, however the landlord's agent has never been there and is not certain of the size of the home.

The landlord's agent further testified that the parties had been before an Arbitrator in December, 2017 concerning the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and the application was dismissed. However, the landlord was ordered to put an electrical meter on the home by January 19, 2018. The Arbitrator made a finding with respect to a second tenancy agreement, and found that the three tenants named in the landlord's application concerning this hearing had a tenancy agreement with the landlord, and specified that others were occupants only.

The tenants failed to pay rent in October, 2017 and on October 26, 2017 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by serving a person who appeared to reside in the rental unit. A copy of the notice has been provided as evidence for this hearing and it names 2 tenants only (RPL and SLS) and is dated October 26, 2017 and contains an effective date of vacancy of November 5, 2017 for unpaid rent in the amount of \$1,150.00 that was due on October 1, 2017. No rent has been paid since it was issued and the tenants are currently in arrears of rent the sum of \$4,600.00.

**The landlord** testified that no rent has been received since the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued on October 26, 2017. The landlord only deals with the tenant who the landlord originally had a tenancy agreement with (RPL), and who did not attend this hearing. The landlord expects that tenant to collect all rent from the

other tenants and pay cash to the landlord, however no receipts are issued by the landlord or by the tenant (RPL).

**The landlord's witness** (SM) testified that he served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by giving it to an adult who apparently resides in the rental unit. The witness found some fellows in the back yard of the rental unit and the parties had a conversation wherein the witness was told that the tenants were looking for a place to move to and stated that the tenant in the upper level of the rental home wasn't paying the bills. The witness was also told that the tenant in the upper level of the rental home wasn't giving the rent money to the landlord, and they weren't going to give rent money to him anymore.

**The first tenant** (SLS) testified that the tenant now residing in the upper level of the rental home (RPL) was the first tenant. The rental home is a 2-storey house with 2 kitchens. The tenant in the upper level (RPL), who has not applied for dispute resolution and has not attended this hearing, moved the fridge and stove to the upper level of the rental home.

The tenants paid rent in cash to RPL, but no receipts were ever given. He was supposed to pay the landlord. The tenant had told the landlord it was a bad idea, but the landlord wanted it that way. The landlord attended the rental unit two days ago and said that he hadn't received a dime in rent for 4 months, which was a surprise to the tenant. The tenant testified that he and the other tenant (DR) paid the tenant (RPL) \$375.00 each on October 2, 2017 as well as on November 1, 2017 and December 1, 2017 and again in January, 2018. All payments were made in cash, and no receipts were given.

**The second tenant** (DR) testified that no receipts for any month have been given to the tenants for rent paid.

The tenant also testified that the landlord knew about all of the tenancy agreements made, and since the landlord didn't contest the second tenancy agreement it was deemed to be valid. The landlord knowingly participated in the creation of the second tenancy agreement, and then said it was invalid. It was all a conspiracy of the landlord and the tenant in the upper level (RPL) against the other two tenants.

### Analysis

I explained to the parties the legal principle of *res judicata*, which is a doctrine that prohibits me from making any findings or decisions that have already been heard and adjudicated upon, and that I would be reviewing the Decision from the December 13, 2017 hearing.

In that hearing, the tenants had applied for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and the Decision shows that the tenant clarified that they sought to establish the names of all tenants under this tenancy, and for an order that the landlord repair the electrical system so that a hydro meter can be reinstalled, and for an order that the landlord put the hydro account in the landlords' name.

The Analysis portion of the Decision shows that the Arbitrator made a finding that there are three tenants: R.L., S.S. and D.R. based on 2 tenancy agreements. The landlord was ordered to ensure that all required electrical work is completed and that a meter is installed by BC Hydro no later than January 19, 2018.

The *Residential Tenancy Act* specifies that a landlord must give receipts for payments made for rent or utilities or security or pet damage deposits. In this case, I find that the landlord has chosen to appoint one tenant as collector of rent for all tenants. That is not contrary to the *Act*, however receipts are still required.

In order to be successful in an application for an Order of Possession and a monetary order for unpaid rent, the landlord must be able to establish that rent wasn't paid. The tenants both testified that they paid the rent each month to the tenant who I find conveniently chose not to attend this hearing. The landlord testified that he expected the tenant in the upper level to collect rent from the remaining tenants in cash, and that neither of them issued receipts for any payments.

I accept the testimony of the tenants that they paid the rent to the person the landlord has chosen to collect rent. The landlord agrees that was the arrangement. That person is therefore an agent of the landlord by exercising powers and performing duties under the tenancy agreement. Further, given that neither the landlord nor the tenant who collects rent ever gives receipts, the tenants are not able to provide written evidence of rent paid, which is a breach by the landlord. One of the tenants testified as to the dates and amounts of rent paid, and I accept that testimony.

In the circumstances, I am not satisfied that the landlord has established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, and I therefore cancel it and the landlord's application is dismissed. I leave it to the landlord to collect the rent from the tenant who was chosen by the landlord to collect it from other tenants. I also order the landlord, and any agent of the landlord who collects rent from any tenant in cash to give a receipt for the full amount collected.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenants

(SLS and DR) in that amount. I further order that the tenants (SLS and DR) be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order does not replace any previous orders of the director, Residential Tenancy Branch.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 26, 2017 is hereby cancelled and the tenancy continues.

I further order the landlord to comply with the *Residential Tenancy Act* by giving receipts for all payments received in cash, and instructing any agent or other person who collects rent on behalf of the landlord to give receipts for all payments made in cash.

I hereby grant a monetary order in favour of the tenants (SLS and DR) as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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 19, 2018

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Residential Tenancy Branch