



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC MNRL FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for cause; a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The landlord was also accompanied by his wife and a witness, however neither gave any testimony or participated in the hearing. The parties were given the opportunity to question each other and give submissions.

During the course of the hearing, the parties agreed that the landlord had not provided any evidence to the tenants, and therefore I decline to consider any of the landlord's evidentiary material. The tenants have served the landlord with their evidence, all of which is considered in this Decision.

Also, during the course of the hearing the landlord advised that the tenants have vacated the rental unit and the application for an Order of Possession is withdrawn.

### Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on October 1, 2017, although the tenants actually moved in a few days earlier. Rent in the amount of \$1,000.00 per month was payable at the end of each month for the following month. No

security deposit or pet damage deposit was collected from the tenants, and no written tenancy agreement exists. The rental unit is a basement suite in the landlord's home and the landlord resides in the upper level of the home.

The landlord further testified that the tenants didn't pay any rent for November or December, 2017. The tenants paid \$800.00 for October, 2017 in cash, however the landlord didn't question it and didn't issue any receipt. The tenants have also failed to pay any utilities but the landlord was not able to testify as to the amount the tenants ought to have paid.

The tenants moved out on January 6, 2018, and the landlord claims \$2,000.00 for unpaid rent for November and December, 2017.

**The first tenant** (DJS) testified that at first, the landlord didn't want any rent and the tenants were to make repairs to the rental unit, but the tenants insisted that they pay rent. The tenants moved in early October, not September as the landlord testified. The landlord wanted the tenants to move out just 2 weeks after they moved in.

During the tenancy the landlord kept entering the rental unit when the tenants were not at home, and the parties had many conversations about that, and the tenants told the landlord that they were going to change the locks.

The tenants paid the landlord \$1,000.00 at the beginning of October, 2017. At the beginning of November, the tenants placed \$1,000.00 cash in the landlord's mailbox because the landlord refused to open the door, and phoned the landlord on his cell phone to ensure he knew it was there, then saw the landlord take it. Both payments were made in cash and no receipts were issued by the landlord.

The landlord also gave the tenants notes, copies of which have been provided for this hearing. One of the notes gives the tenants notice to move out so the landlord could occupy the rental unit. The tenant contacted the Residential Tenancy Branch and were advised that where a landlord does so, the tenants get 1 month of rent for free, but the notice he gave the tenants was not in any form, but handwritten. The tenant did not understand that it had to be in an approved form. The landlord didn't care that the tenants didn't pay; he just wanted the tenants to leave.

**The second tenant** (JS) testified that the tenants moved into the rental unit in the beginning of the 2<sup>nd</sup> week of October, and had company for Thanksgiving. The landlord got mad saying that he was not running a brothel and the tenants weren't permitted company. The landlord told the tenants he wanted them to leave. The tenant put up a

minor argument saying there should be a civil way to deal with it, but the landlord simply wanted the tenants to leave.

During the tenancy the landlord's witness was stalking the tenants, and frightened them a couple of times by standing outside the door of the rental unit in the dark when the tenants returned from work.

Further, the tenants had called police because the landlord left threatening notes and entered the rental unit daily while the tenants were not home, unplugged appliances and inspected without notice to the tenants. The Residential Tenancy Branch told the tenants that if they were concerned for their safety they could change the locks, so they did. The tenants were also concerned of the landlord perhaps towing the tenants' vehicles or removing their belongings because he had threatened both. Copies of notes have been provided as evidence for this hearing.

The tenants paid \$1,000.00 for October's rent and \$1,000.00 for November's rent. Once it was established that the tenants were moving out, the landlord told the tenants in the presence of police that he'd return the rent, but the tenant refused that offer.

### Analysis

Where a landlord makes a claim for unpaid rent, the onus is on the landlord to establish that it's owed, and the amount owed. The landlord testified that he didn't question the \$800.00 rent payment for October and didn't receive any rent for November or December, 2017, and never issued any receipts even if paid in cash. However, the tenant testified that the tenants paid \$1,000.00 for October and \$1,000.00 for November and saw the landlord retrieve the November payment from the landlord's mail box. I prefer the testimony of the tenants, and I find that the landlord has failed to prove the claim.

However, the tenants agree that no rent was paid for December, 2017, believing that since the landlord served a hand-written notice that he wanted the tenants to move out for the landlord to occupy the rental unit, the tenants were entitled to a free month of rent. That is true in the case of a landlord serving a Two Month Notice to End Tenancy for Landlord's Use of Property, but the landlord did not do so in this case, and therefore the tenants did not have to move out legally, and must pay the rent.

I find that the landlord has established a monetary claim in the amount of \$1,000.00 for rent for December, 2017.

The landlord was not able to satisfy me that the tenants owe any money for utilities and I dismiss that portion of the landlord's claim.

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

### Conclusion

For the reasons set out above, I hereby 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 \$1,100.00.

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 31, 2018

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Residential Tenancy Branch