



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Tenants: CNR FF

Landlords: OPR MNR FF

### Introduction

This hearing, held by teleconference on February 8, 2018, dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- An order of possession based on a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice); and,
- A monetary order for unpaid rent or utilities.

The Tenants seek an order to:

- Cancel the Notice to End Tenancy for Unpaid rent or utilities.

One of the Landlords, L.W., attended the hearing and also brought an agent, S.A., to assist her. Both of the Tenants attended the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other’s application package and documentary evidence. However, during the hearing the Tenant stated that their package was missing one of the letters the Landlord was referring to (undated, and written by one of the Landlords, M.W.)

In this case, I have proceeded to make my decision in the absence of this one letter, as I am not satisfied it was included with the Landlord’s evidence package and am not satisfied it has been sufficiently served for the purposes of the Act. Furthermore, the Landlord only provided this letter to our office 10 days before the hearing. Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a

hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
  - If not, are the Landlords entitled to an Order of Possession
- Are the Landlords entitled to a monetary order for unpaid rent or utilities?
- Is either party entitled to recover the filing fee for the cost of this application?

#### Background and Evidence

Both parties agreed in the hearing that when the tenancy started in 2012, there was no written tenancy agreement. The Tenants stated that there was a verbal tenancy agreement only with one of the Landlords, M.W. Both parties agreed that rent was set at \$1,200.00 and was due on the first of the month for the entire house (and upper and a lower unit).

The Tenants stated that in November of 2016, one of the Landlords, M.W., approached them and spoke to them about wanting to sell the house. The Tenants testified that M.W. said that while the house was being sold, they would not have to pay rent. The Tenants stated that they stopped paying rent in December of 2016, as per their discussion with M.W. The Tenants stated that they did not hear anything from the Landlords until July 24, 2017, when L.W. sent them a letter indicating she was going to be managing the property going forward, not M.W. The Tenants stated that nowhere in this letter did it say anything about them not paying rent, and they did not hear anything further from the Landlord until November 15, 2017, when L.W. stated she needed access to the house for a showing.

The Tenants stated that since L.W. did not give proper 24-hour notice to them, they took issue with the prospective showing. The Tenants stated that after they took issue with the short notice to enter their unit, the Landlord tried to end the tenancy for non-payment of rent.

The Landlord issued multiple Notices in November 2017. However, L.W. cancelled those and decided to proceed with the most recent one, issued on December 15, 2017, which the Tenants subsequently applied to cancel. The Tenants stated they received this Notice on December 21, 2017. The Notice indicates that the Tenants owe \$15,600.00 in unpaid rent going back several months.

L.W. referred to a letter she provided in evidence to show that when M.W. was managing the property, he expected rent to be paid, but it was not. As previously indicated, I have not considered this letter, as it was not submitted in accordance with the rules of procedure. The L.W. stated that M.W. could not come to this hearing because he is not mentally capable of doing so. L.W. also stated that this was part of the reason she took over managing the property part way through last year (2017).

The agent for the Landlord, S.A., stated that it is not reasonable to believe that the Landlord, M.W. would allow the Tenants to not pay any rent and she denies that M.W. ever made that promise. The Tenants stated that they specifically had conversations with M.W. about not having to pay rent until the property sold. The Tenants stated that they agreed to take care of the property, including maintenance and keeping it presentable. The Tenants stated that they have not spoken with M.W. since November 2016, and the rent issue only came up towards the end of 2017 when L.W. and S.A. began issuing notices to end tenancy for unpaid rent and after a disagreement arose over the Landlord not giving a full 24-hour notice before wanting to show the property to a potential buyer.

### Analysis

The first issue I will address is whether the Tenants are entitled to have the Landlords' Notice cancelled. As the Landlords cancelled the first Notices they issued in November 2017, the only remaining Notice to consider is the one received by the Tenants on December 21, 2017, which indicated that they owed \$15,600.00 in unpaid rent.

In this review, I note that the onus is on the Landlord to prove the reason for the Notice, which in this case is non-payment of rent. The Tenants acknowledge not paying any rent since November 2016, so the issue here is whether rent was due, not whether it was paid.

After considering the totality of the evidence and testimony on this matter, I note that the parties disagree on whether or not the Tenants were allowed to not pay rent. However, I note that M.W. did not attend the hearing to explain what may have been discussed in

November of 2016 regarding not paying rent while the property was being sold. Overall, there is little to no documentary evidence to support what the arrangement was in terms of rent from the period of December 2016, until December 2017. Even if I had accepted the letter from M.W. alleging rent was to be paid, which I have not (as explain above), I still would have given little weight to this letter, since L.W. testified that M.W. no longer had the mental capacity to act as a Landlord.

I find the Landlords' inaction with respect to the non-payment of rent to be problematic in this case. The Tenants were relying on a conversation they had with the Landlord, M.W., to support that they did not need to pay rent and after almost a year of this arrangement, the other Landlord, L.W., took issue with it and sought to collect on the rent she felt was due. In making my findings on this matter, I turn to the common law principle of Estoppel. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In this case, I find the Landlords are estopped from collecting rent for the period from December 2016 (the month following the initial conversation with M.W.) through to December 2017 (the time the Landlord issued the Notice to show that rent was payable again). I find the Tenants relied on their initial conversation with M.W. in November of 2016 and further relied upon the Landlords failure to enforce the non-payment of rent as permission to continue to not pay rent. That being said, it is now clear that the Landlord would like to collect rent, going forward, and the Tenants do not take issue with that. The Tenants indicated that they were willing and able to pay for rent that may have accrued since December 2017.

Given that the Notice received by the Tenants on December 21, 2017, was for an amount of rent that I have already found is not due, I find there is insufficient basis to uphold the Notice. As such, I cancel the Notice, and it is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. As of January 2018, I find the Tenants are responsible for resuming their rent payments on the first of the month in the amount of \$1,200.00, for as long as the tenancy shall continue. I order the Tenants to pay for January, February and March 2018 rent (totaling

\$3,600.00) by March 1, 2018. If the Tenants fail to pay this amount by March 1, 2018, the Landlord is at liberty to issue another Notice for non-payment of rent.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. However, I decline to award either party with the recovery of their filing fee, given that each party was partly successful in this hearing.

### Conclusion

The Notice is cancelled, and the tenancy will continue until it is ended in accordance with the Act.

I order the Tenants to pay for rent for January, February and March of 2018 (totaling \$3,600.00) by March 1, 2018. If the Tenants fail to pay this amount by March 1, 2018, the Landlords are at liberty to issue another Notice for non-payment of rent.

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 08, 2018

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Residential Tenancy Branch