



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act, (the “Act”), for an order of possession based on a 1 Month Notice for Cause (the “Notice”), and for a monetary order for unpaid rent.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Preliminary and Procedural Matters

I am satisfied that both parties have exchanged evidence; however, the tenant’s evidence appears not to have been uploaded into the Residential Tenancy Dispute portal.

I accept that counsel for the tenant submitted the evidence and that a technical error likely occurred. Therefore, I have allowed the tenant’s evidence to be submitted after the hearing, as this is not prejudicial to the other party in accordance with the Rules of Procedure.

At the outset of the hearing counsel for the tenant stated that the Act does not have jurisdiction over this matter, as the tenant’s interest in the rental unit is greater than a tenancy.

### Issues to be Decided

Does the Act have jurisdiction over this matter?

Is the landlord entitled to an order of possession?

Is the landlord entitled to monetary order for unpaid rent?

### Background and Evidence

#### Jurisdiction

The tenant's counsel submits that on October 5, 2010, the respondent and their brother entered into a contract of purchase and sale of the property. The tenant's counsel submits that the respondent was not able to purchase the property and as a result the tenant's parents on their behalf purchased it. Filed in evidence is a copy of the contract of purchase and sale.

The tenant's counsel submits that the respondent was to pay \$1,100.00 towards the mortgage for the upper portion of the property and their brother was to pay \$800.00 for the lower portion of the property.

The tenant's counsel submits that Residential Tenancy Branch (the "RTB") Policy Guideline 9 – Tenancy agreements and licenses to occupy (the "Guideline") support this is not a tenancy, as the respondent did not pay a security deposit, the respondent pays the property taxes through their monthly payment, and his client has paid for painting and has purchased appliances.

The tenant's counsel submits that RTB Guideline 27 further supports this is a verbal contract to rent to own.

The landlords' counsel submits that the tenant and their brother could not purchase the property, so the landlord purchased the property and took a second mortgage out on their family home.

The landlords' counsel submits that the tenants' parents purchased the property so they could provide affordable living accommodation for their children. The agreement was that the tenant would rent the upper portion of the house and the landlords' son would rent the bottom portion.

The landlords' counsel submits the tenant has no legal rights to the property that is greater than that of a tenant. Counsel submits the landlords pay the property taxes, the insurance and that the tenants have exclusive possession of the rental unit. Filed in evidence is a copy of the insurance with support the property is insured in the landlords' name. The tenant is covered under that insurance, as there is a miscellaneous endorsement.

Filed in support of the landlords is an affidavit of WP/landlord, attached is a copy of the land title document, which show the landlords are joint tenants of the property. The land title document does not show that the tenant has any legal right to the property or that the tenant is on title.

Filed in support of the landlords is an affidavit of NP, the son of the landlord, who currently occupies the lower portion of the residence. The affidavit indicates that the property was purchased as an investment for their parents' retirement and to assist his sister and himself with their living situation. The affidavit indicates that his sister, the tenant in this matter, and her children were having financial troubles and struggling to find a place to live. The affidavit confirms the landlords' version of events that this was a rental situation/tenancy and that the tenant and the landlord's son are not responsible to pay property tax, the city utility levy, or insurance for the property.

#### Order of Possession

The tenant's counsel argues that the Notice is not valid, as it does not comply with section 52 of the Act, as it fails to state a reason to end the tenancy.

The landlord WP testified that they were unable to talk directly to their daughter as she refuses to speak to them. WP stated that they left messages for their daughter.

#### Unpaid rent

The landlord LP testified that in April 2016, their daughter asked them to sell the property. LP testified that they told their daughter that they had no intention to sell the property and their brother was still living in the lower portion.

The landlord LP testified that their daughter was mad and said she would never speak to them again and then in August 2016, their daughter stopped paying any rent. LP stated they have not received any rent payments as of the date of the hearing on February 22, 2018.

The landlord WP testified that they were in the hospital for an extended period, approximately eight months. WP stated that they tried to contact their daughter/tenant about non-payment of rent while they were in the hospital; however, their daughter/tenant never responded. WP stated that they have had to pay the mortgage out of their pension and not the anticipated rent.

The tenant testified that they paid the amount of \$1,100.00 every month. The tenant stated that they paid the amount of \$550.00, which was withdrawn from their account and their boyfriend paid his portion. The tenant stated that every month they would put the cash through the mail slot, which the landlords denied

Filed in evidence for the tenant to support that rent was paid are banking information, which I will described in more detail further in this decision.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

### Jurisdiction

In this case, the onus is on the tenant to prove they have interest in the property that is greater than that of a landlord.

I have considered RTB Policy Guideline 9; however, the guideline is to determine whether there is a tenancy agreement or license to occupy.

Part 1 of the Act defines, tenancy agreement,

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

Therefore, I find this is not relevant to the issue of jurisdiction under the Act as a license to occupy and a tenancy agreement fall within the Act.

I have further considered RTB Policy Guideline 27, transfer of an ownership agreement

Although I accept the tenant and their brother attempted to purchase the property from the original owner, they did not financially qualify and they were removed from the contract and their parents were added in their place; rather than simply adding them as joint owners.

This was a retirement investment for the landlords and they took a second mortgage on their family home. They allowed their adult children to move into the property under separate oral agreements, simply to help them with their living situation.

The tenant was to pay the amount of \$1,100.00 per month and their brother was to pay \$800.00. The tenants do not pay property tax, insurance or utility levies.

In this case, the tenant's brother NP was also on the contract to purchase, and would have the same legal interest as the tenant. NP confirmed in their affidavit that they are simply a tenant and have no other interest in the property.

I accept the evidence of the landlords and the affidavit evidence of NG that this is a tenancy. I do not find the tenant has any interest in the property greater than that of a tenant. Therefore, I find the Residential Tenancy Act applies.

#### Order of Possession

I have reviewed the One Month Notice to End Tenancy for Cause, while I accept the Notice is in the property form, I find it does not comply with Section 52 of the Act as there is no cause listed. While section 68 of the Act gives me the authority to amend the Notice, if the person receiving should have or ought to have known the reason.

I am not satisfied the tenant was aware of the reason, as no details were provided in the Notice and no letter was attached. Therefore, I find I must cancel the Notice and the Notice has no force or effect.

#### Unpaid rent

Both parties have provided a different version of events. The evidence of the landlords was the tenant has paid no rent since August 2016. The evidence of the tenant was that rent was paid every month in cash by depositing in the landlords' mail slot.

The tenant has submitted as evidence a list of payments made and the source of the payments. In support of the list are the following documents:

- Incomplete bank statements in the name of NF, and an attached banking information (the “Statements”);
- one bank statement for January 1 to January 31 2017, in the name of KS, and banking information of KS exported into a spread sheet, labelled the WebFOCUS report (the “Report”)

I have reviewed the Statements of the tenant's they appear to be exported information, not the actual bank statement. In those Statements they show the tenant withdrew the amount of \$550.00 on several dates, which they claimed was paid to the landlord.

However, on October 5, 2017, the withdrawal of \$550.00, shown in the statement is not aligned with the other numbers; this is consistent throughout the spreadsheet, which leads me to believe these may have been altered because the amount of \$550.00 is the only amount that is not aligned with the others numbers throughout these Statements. Further, the running total of the account is confusing, as the balance is not accurately reflected for me to review.

I have reviewed the bank statement of KS and the attached Report, the Report starts at page 13 to page 22; however, pages 14, 15, 18 & 19 were not included. These Reports also appear to have been altered. I have only listed the following as examples, although the list is not exhaustive.

Date	Bank statement of KS	The Report	Discrepancy in evidence submitted by the tenant
January 08, 2018		Withdrawal \$1100.00	The total prior to the transaction is the amount of \$307.21 - \$1100.00= (\$792.79); however, the balance is \$281.82, which supports the withdrawal at the time was \$25.39. The Report appears to have been altered.
January 24, 2017	Withdrawal\$500.00	Withdrawal \$550.00	The bank statement and the Report are conflicting as there is a discrepancy of \$50.00 for the same entry. The starting total on January 24, 2017, in the Report is \$7849.70 – \$550.00 = \$7299.70; however, the balance is \$7349.70, which

			support the withdrawal was \$500.00, as shown in the bank statement and not \$550.00 shown in the Report. The Report appears to have been altered.
September 5, 2017		Withdrawal \$1100.00 and deposit of \$125.00	This is the only transaction in the Report that has both a withdrawal and a deposit on the same line; every other transaction (even on the same date) is on a separate line. The balance prior to these transactions was \$19.06 and the closing balance after these transactions was \$144.06. $(\$19.06 + \$125.00) \$144.06$ . This support the amount of \$125.00 was deposited and no such withdrawal was made. The Report appears to have been altered.
April 19, 2017		Withdrawal \$1100.00	The Report balance prior to the withdrawal was \$169.46 $-\$1100.00 = (\$930.55)$ ; however the balance is \$110.20, which supports the amount that was withdrawn at the time was \$59.26, not the amount of \$1100.00. The Report appears to have been altered.
December 22, 2017		Withdrawal \$1100.00	The Report balance prior to the withdrawal was \$354.75 $-\$1100.00 = (\$745.27)$ ; however, the balance is \$334.75, which supports the withdrawal was \$20.00. The report appears to have been altered.

Based on the above discrepancies in the Statements and the Report, I question the credibility of the tenant, as the only reason for such discrepancies is an attempt to cover up the fact that rent was not paid as I find the document was likely altered.

I accept the evidence of the landlords that the tenant did not pay rent because they did not want to sell the property and their daughter/tenant was mad at them. This has the ring of truth and demonstrates the tenant's sense of entitlement to the property, rather than any legal entitlement to the said property.

I find the tenant has breached section 26 of the Act, when they failed to pay rent and this caused a financial loss to the landlords. Therefore, I find the landlords are entitled

to recover unpaid rent from August 2016 to February 2018, in the total amount of **\$22,000.00.**

As I have found the tenant has not paid rent for the months claimed by the landlords, the landlords are at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent, in the above noted amount, plus any further unpaid rent. The tenant will have five days to pay the full amount of the unpaid rent.

The landlord is at liberty to file a copy of this decision at any future hearing to show the tenant has no legal interest in the rental unit greater than that of a tenant, and that I have found the tenant owes unpaid rent in the above amount.

### Conclusion

The landlords' application for an order of possession is dismissed with leave to reapply. The landlords are granted a monetary order in the above noted amount, pursuant to section 67 of the Act.

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: March 2, 2018

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Residential Tenancy Branch