



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF, CNC, OLC

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants' applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package(s) served by the other party. As such, I find that both parties have been sufficiently served as per section 90 of the Act.

The landlords stated that the tenants were not served with their submitted documentary evidence package. The tenants confirmed that no evidence was received from the landlords. As such, I find that the landlords failed to comply with section 89 of the Act

and the submitted documentary evidence by the landlord is excluded from consideration in this hearing. Both parties confirmed that the tenants personally served the landlords with their submitted documentary evidence on February 20, 2018. As such, I find that the landlord has been properly served as per section 89 of the Act.

At the outset, extensive discussions took place due to the landlords' inability to effectively communicate. 20 minutes were used to ascertain the service of documents. Clarification with both parties found that the tenants' application was unrelated to the landlord's 10 Day Notice dated February 11, 2018. The tenants' application for an order for the landlord to comply with the Act, Regulations or Tenancy Agreement (OLC) and the tenants' request for a monetary claim of \$9,500.00 were dismissed with leave to reapply as they were unrelated to the issue of unpaid rent or the 1 Month Notice for cause.

The hearing proceed on the landlords request for an order of possession and a monetary order for unpaid rent of \$480.00 and recovery of the \$100.00 filing fee as well as the tenants' request to cancel the 1 Month Notice.

#### Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Are the tenants entitled to an order cancelling the 1 Month Notice?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on April 1, 2014 on fixed term tenancy ending on March 31, 2017 as per the submitted copy of the signed tenancy agreement dated March 10, 2014. The monthly rent is \$1,500.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$750.00 was paid on March 10, 2014.

Both parties confirmed that the landlords served the tenants with a 10 Day Notice issued for Unpaid Rent (the 10 Day Notice) dated February 11, 2018 in person on February 11, 2018. Both parties agreed that the 10 Day Notice sets out that the tenants

failed to pay rent of \$480.00 that was due on February 1, 2018 and provides for an effective end of tenancy date of February 22, 2018.

Both parties confirmed that the tenants did not pay rent on February 1, 2018, but that rent was paid on February 26, 2018. The landlord claims that notice was given to the tenants that accepting rent late was for use and occupancy only. The tenants disputed this claim that any notice was given. The landlords were unable to provide any supporting evidence of this notice.

Both parties confirmed that rent for March and April for \$960.00 was not paid. The tenants claim that the landlord has not collected the rent, nor have they responded to any of the messages sent by the tenants for picking up the rent. The landlords dispute this claim stating that she has tried to collect the rent on numerous occasions, but that the tenants never respond to her attempts. Both parties confirmed that since the tenancy began on April 1, 2014 the landlords always contacted the tenants at the end of each month to arrange pick up of the rent due for the next month. The tenants dispute the landlords' claims of not responding to their attempts at collecting rent.

Both parties confirmed that the landlords served the tenants with a 1 Month Notice to End Tenancy issued for Cause (the 1 Month Notice) dated February 11, 2018 in person on February 11, 2018. The 1 Month Notice sets out an effective end of tenancy date of March 14, 2018 and one reason for cause listed as "Rental unit/site must be vacated to comply with a government order". No details were provided on the 1 Month Notice for the Cause selected.

The tenants dispute this notice stating that they have not been provided with a copy of the government order, nor have they been informed of the reason for the order. The landlords dispute this claim stating that although a copy of the order was not given it was explained to the tenants for the reason. The tenants dispute this claim that no reasons for the order were provided to the tenants. The landlords were unable to provide any details of the reason for this order or which government had issued it.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, both parties confirmed that the landlords served the tenants with the 10 Day Notice dated February 11, 2018. Both parties confirmed that rent was not paid by the 1<sup>st</sup> of February 2018. Both parties confirmed that the tenants paid rent late on February 26, 2018 after the effective end of tenancy date set on the 10 Day Notice dated February 11, 2018. The landlords have claimed that the tenants were given notice that the acceptance of rent was for “use and occupancy only”, but the tenants dispute this claim stating that no such notice was provided. The landlords were unable to provide any supporting evidence of this notice. I find on a balance of probabilities that I prefer the evidence of the tenants over that of the landlords. On this basis, I find that the landlord re-instated the tenancy by accepting the rent paid on February 26, 2018 after the effective end of tenancy date and did not provide notice to the tenants that it was being accepted for “use and occupancy only”. The 10 Day Notice dated February 11, 2018 is set aside and the tenancy shall continue.

On the landlords’ claims for unpaid rent of \$960.00 for the months of March and April 2018, both parties confirmed that rent was not paid. I accept the undisputed evidence of both parties and find that rent is owed for March and April 2018 and grant the landlords’ request for a monetary order.

As for the landlords’ request for recovery of the \$100.00 filing fee, I find that as the landlord has been partially successful that the landlord is only entitled to recovery of \$50.00 for the filing fee.

I accept the undisputed evidence of both parties that the landlords served the tenants with the 1 Month Notice dated February 11, 2018 in person on February 11, 2018. Both parties confirmed that selected reason for cause was due to a government order. Both parties confirmed that the landlords did not provide any details of the government order to the tenants. The landlords have not disclosed any particulars of the government order for the purposes of this hearing. On this basis, I find that tenants are entitled to an order cancelling the 1 Month Notice dated February 11, 2018. The tenancy shall continue.

I also find that as the tenant has been successful in their application for dispute that they are entitled to recovery of the \$100.00 filing fee.

In offsetting the monetary claims of both parties, I order that the landlord is granted a monetary order for the difference of \$910.00.

### Conclusion

The landlords' request for an order of possession is dismissed. The 10 Day Notice dated February 11, 2018 is set aside and the tenancy shall continue.

The tenants' application to cancel the 1 Month Notice is granted. The 1 Month Notice dated February 11, 2018 is set aside and the tenancy shall continue.

The landlords are granted a monetary order for \$910.00.

This order must be served upon the tenants. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: April 27, 2018

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Residential Tenancy Branch