



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR ERP RP OLC RR MNDCT  
                             OPR MNRL-S FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord as against 2 tenants and by one of the tenants as against the landlord.

The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order that the landlord make emergency repairs for health or safety reasons; an order that the landlord make repairs to the unit, site or property; an order that the landlord comply with the *Act*, regulation or tenancy agreement; an order reducing rent for repairs, services or facilities agreed upon but not provided; and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord and one of the named tenants attended the hearing during which the tenant applied to adjourn the hearing to allow the tenant more time to provide evidence. The landlord did not agree to the adjournment, and no adjournment was granted.

The landlord testified that each of the tenants were served with notice of this hearing (the Hearing Package) individually by registered mail on August 17, 2018 and has provided evidence of that. I find that both tenants have been served in accordance with the *Residential Tenancy Act*.

The parties each gave affirmed testimony and were given the opportunity to question each other, and all evidence provided has been reviewed and is considered in this Decision.

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 pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Should the landlord be ordered to make repairs to the unit, site or property?
- Should the landlord be ordered to make emergency repairs for health or safety reasons?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the landlord's failure to provide the rental unit in a move-in condition?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

**The landlord** testified that this month-to-month tenancy began on May 15, 2018 and the tenants still occupy the rental unit. Rent in the amount of \$1,600.00 per month is payable on the 15<sup>th</sup> day of each month, however the parties agreed to that for the first month, and then on June 15 the tenants would pay half a month's rent to the end of June, and commencing July 1, 2018 rent would be due on the 1<sup>st</sup> day of each month.

On April 27, 2018 the landlord collected a security deposit from the tenants in the amount of \$800.00 as well as a pet damage deposit in the amount of \$800.00, both of which are still held in trust by the landlord.

The rental unit is a suite within a house containing another rental unit above it. There is no written tenancy agreement, and no move-in condition inspection report was

completed by the parties. The previous tenant was not able to move out when expected to, and signed a Mutual Agreement to End Tenancy effective May 15, 2018. The landlord had surgery scheduled for May 15, 2018, and contacted the tenants prior to explain that the tenancy could not begin until then. The landlord offered a full house to the tenants permanently or for the additional 2 weeks required, but the tenants said it wasn't necessary.

The landlord further testified that the tenants are currently in arrears of rent the sum of \$5,600.00 for June 15 to 30 and also for July, August and now September, 2018. The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 3, 2018 by posting it to the door of the rental unit. A copy has been provided as evidence for this hearing which contains an effective date of vacancy of July 15, 2018 for unpaid rent in the amount of \$1,600.00 that was due on July 1, 2018. It is not dated or signed by the landlord, however the landlord testified that no rent has been paid since it was issued.

Despite text messages, voice mail messages, emails and phone calls, the landlord has not been able to reach the tenants, and has not had any opportunity to make any repairs.

**The tenant** testified that on May 19, 2018 the landlord collected \$1,600.00 for rent and none has been paid since because the parties were having issues about when the tenancy was to commence or how much rent would be. The previous tenant didn't move out and his belongings were still in the rental unit. The tenant actually moved in on June 15, however the landlord insisted that the tenant pay the first month's rent on May 19 and get the keys and sign the tenancy agreement. The tenant believes that rental arrears are \$1,600.00 for July 15 to August 15; and \$1,600.00 for August 15 to September 15, 2018, for a total of \$3,200.00.

Originally, the tenancy was to begin on May 1, 2018, but the previous tenant hadn't moved out. On May 13 the landlord wanted to meet with the tenants at the property, but the landlord didn't show up and later asked the tenant to make arrangements with the previous tenant to get the keys. The previous tenant told the tenant he'd leave them in the rental unit on May 15. The tenant went back on the 15<sup>th</sup>, and there were no keys. The door was unlocked, furniture was still there, garbage was everywhere and the TV was still on. The tenant texted the landlord; the parties were to meet to sign the tenancy agreement. The next day, the landlord called the tenant about letting the tenants from the upper unit into the rental unit, but they worked for 7 hours removing items left by the previous tenant. It took 3 weeks to get that stuff cleaned out.

The only time the landlord tried to get ahold of the tenant was when rent was due, but the parties had a conversation about repairs required. Electrical outlets weren't working except in the kitchen, a window in the kitchen has a hole in it, the window in the small bedroom requires repair so it can close and lock, and the bathroom window also needs to be repaired. A post on the porch is not attached properly and appears to be required to hold up that portion of the roof. There is no smoke detector, and the smoke smell in the kitchen and living room are still present. The tenant seeks an order that the landlord paint the rental unit and have air quality testing completed. The tenant testified that the smell gets to her in the throat when she walks in, and her doctor recommended air quality testing.

The tenant also seeks 70 hours of cleaning stuff out from the previous tenancy. The tenant has taken stuff out and it's still laying in the yard, and the garage was full too. The tenant had to pay extra storage because the move-in date was set back. The tenants didn't actually move in until June 14, 2018 which is the day movers were there. The tenants' application seeks \$2,112.74 in monetary compensation.

The tenant also testified that she changed the lock to the rental unit, and the landlord does not yet have a key.

### Analysis

Firstly, during the course of the hearing I ordered the tenant to provide the landlord with a key that gives access to the rental unit forthwith.

In order to be effective, a notice to end a tenancy given by a landlord must be dated and signed by the landlord. In this case, there is no date and no signature of the landlord, and therefore the landlord's application for an Order of Possession must be dismissed.

It is not the responsibility of a tenant to get a key from a previous tenant or to ensure that the rental unit is ready for re-renting. That is the responsibility of a landlord, and if the landlord cannot be available, the landlord must have an agent deal with re-renting. In this case, the landlord left it to the tenants, and really has no idea of how much stuff remained in the rental unit from the previous tenant. I don't think the landlord has any idea of when the tenants were able to move in.

The tenant agrees that \$3,200.00 is owed for rent to September 15, 2018. The parties agree that the tenants paid the first month of \$1,600.00 which was to run from the 15<sup>th</sup> of the month to the 14<sup>th</sup> of the following month. I am not satisfied, given that there is no written tenancy agreement or move-in condition inspection report to prove otherwise,

that the landlord has established any more than that. Since the tenancy has not yet ended, I dismiss the landlord's application for a monetary order for unpaid rent with leave to reapply. The landlord is at liberty to issue a notice to end the tenancy if rent remains unpaid.

Since the tenancy has not yet ended, I also dismiss the landlord's application for an order permitting the landlord to keep the security deposit or pet damage deposit with leave to reapply.

Since the landlord has not been successful with the application the landlord is not entitled to recovery of the filing fee.

With respect to the tenant's application respecting required repairs, in the absence of any inspection report or any inspection by the landlord, I accept the tenant's testimony. I order the landlord to repair the windows, have the electrical outlets tested and repaired if necessary, and repair or replace the post on the porch. In the absence of any evidentiary material from the tenant, I decline to order the landlord to remove the debris and items from the previous tenancy from the rental unit, garage and yard. Further, I am not satisfied that the tenant has established that the landlord is required to re-paint the rental unit or provide air quality testing or a smoke detector.

The tenant's application seeks \$2,112.74 in compensation from the landlord but has provided no evidence of how that amount was calculated, and I dismiss that portion of the tenant's application.

The tenant's application also seeks a reduction in rent for repairs, services or facilities agreed upon but not provided. The tenant has not provided any evidentiary material for this hearing and did not lead any testimony with respect to the degree the tenancy may have been devalued, if at all. Broken windows are not a reason to reduce rent, and I dismiss that portion of the tenant's application.

### Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is dismissed, and the undated 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which contains an effective date of vacancy of July 15, 2018 is hereby cancelled, and the tenancy continues.

The balance of the landlord's application is hereby dismissed with leave to reapply.

I hereby order the landlord to repair the windows, have the electrical outlets tested and repaired if necessary, and repair or replace the post on the porch.

The balance of the tenant's application is hereby dismissed.

I order the tenant to provide a key that gives access to the rental unit to the landlord forthwith.

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: September 06, 2018

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Residential Tenancy Branch