



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR ERP FFT  
                             OPRM-DR FFL

### Introduction

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

One of the tenants and both landlords attended the hearing, and the landlord was accompanied by another person to assist. The landlord and the tenant each gave affirmed testimony and the parties were given the opportunity to question each other and make submissions.

The tenant indicated in the hearing that the landlord had not provided all of the landlords' evidentiary material to the tenants. The landlord replied that all evidence was provided. The evidence in question is a list of text messages, and given that the landlords' evidence has been uploaded on 3 different dates, I am not satisfied that the evidence was provided to the tenant and I decline to consider the text messages. All other evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing I explained to the parties that the Rules of Procedure require that multiple applications contained in a single Application for Dispute Resolution must be related. I found that the tenants' claim for emergency repairs is not related to the landlords' application for an Order of Possession and monetary order for unpaid rent or to the tenants' application for an order cancelling the 10 Day Notice to

End Tenancy for Unpaid Rent or Utilities, and I dismiss the tenants' application for emergency repairs.

Also, during the course of the hearing, the parties agreed that the Style of Cause of the Tenant's Application for Dispute Resolution be amended to show the parties as they appear on the tenancy agreement. The frontal page of this Decision reflects the agreed to Style of Cause.

#### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were issued in accordance with the *Residential Tenancy Act*, or should they be cancelled?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?

#### Background and Evidence

**The landlord** testified that this fixed term tenancy began on May 1, 2018 and expired on May 1, 2019, and the tenants still reside in the rental unit. Rent in the amount of \$3,500.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,750.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on May 2, 2019 the landlords served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated May 2, 2019 and contains an effective date of vacancy of May 13, 2019 for unpaid rent in the amount of \$3,500.00 that was due on April 1, 2019. The landlord also served another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a copy has been provided as evidence for this hearing. It is also dated May 2, 2019 and contains an effective date of vacancy of May 13, 2019 for unpaid rent in the amount of \$3,500.00 that was due on May 1, 2019.

Rent is usually paid by cheque, and the tenants gave a cheque for April's rent, but it was returned by the financial institution for insufficient funds. No rent has been paid for May or June, 2019.

The landlord also testified that in June, 2018 the tenants only paid \$2,500.00 for rent and the tenant told the landlord that he had put topsoil on the lawn and gave the landlord an Invoice, but the landlord did not agree to the discounted amount for rent. The next month, the tenant kept back \$500.00 for gardening.

The tenants have not paid any rent since the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were served, and the landlords claim \$12,100.00 from the tenant including recovery of the \$100.00 filing fee.

**The tenant** testified that in April, 2019 the tenant paid \$2,500.00 to the landlord, and does not believe the cheque bounced, but will have to check.

The basement of the rental home has a suite which is currently empty. The tenant is not using that portion since his friend moved out. The landlord agreed that at the end of the fixed term the tenant could rent the upper level only for \$2,500.00, which was also an option at the beginning of the tenancy.

The tenant agrees that no rent has been paid for May or June, 2019, and the tenant owes \$2,500.00 for each of those months.

#### **SUBMISSIONS of the Landlord:**

The landlord disputes that any agreement was made to reduce rent to \$2,500.00 and the tenant renting only the upper level of the rental home. The parties have a written agreement and there is no other agreement.

#### **SUBMISSIONS of the Tenant:**

The tenant did some landscaping and the landlord agreed to reduce rent after the fixed term had expired.

#### Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due, even if the landlord fails to comply with the *Act* or the tenancy agreement. It also states that once served with 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the

Notice), the tenant has 5 days to pay the rent in full, in which case the Notice is of no effect, or to dispute it. In this case, the tenant disputed the Notice, but does not disagree that rent remains outstanding. Therefore, I see no reason to cancel the Notice, and I dismiss the tenants' application.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed both of the Notices, and I find that they are in the approved form and contain information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlords. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenants.

With respect to the landlords' monetary claim, the tenant agrees that no rent has been paid for May or June, 2019. The parties disagree as to the amount of rent owed for those months, but the written agreement states \$3,500.00 per month. The landlord disputes that any other agreement was made. Although a discussion may have occurred with respect to reducing rent I am not satisfied that the landlord agreed to it. I find that the landlords have established the amount of \$3,500.00 for each of those months. With respect to rent for April, 2019, the landlord testified that the tenants' rent cheque was returned for insufficient funds, and the tenant testified that he paid \$2,500.00, but does not recall whether or not the cheque bounced. The landlord issued a notice to end the tenancy for unpaid rent for April, and I am satisfied that no rent was paid to the landlords.

I am not satisfied that the landlords have established any unpaid rent for 2018.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee, for a total of \$10,600.00 ( $\$3,500.00 \times 3 = \$10,500.00 + \$100.00 = \$10,600.00$ )

I order the parties to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety.

I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenants.

I hereby grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$10,600.00.

I order the parties to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

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: June 25, 2019

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Residential Tenancy Branch