



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, CNR, OLC, AS

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On October 17, 2020, the Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenants also applied for an order for the Landlord to comply with the Act, Regulation or tenancy agreement and to be allowed to assign or sublet the tenancy.

On October 25, 2020, the Landlord applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 5, 2020.

The matter was set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

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

### Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on a fundamental breach of the tenancy agreement regarding payment of rent. The Tenants other claims are dismissed with leave to reapply.

#### Issue to be Decided

- Is the tenancy ending based on non-payment of rent owing under the tenancy agreement?

#### Background and Evidence

The Landlord and Tenant provided testimony in agreement that the tenancy began on February 15, 2018 and is currently on a month to month basis. Rent in the amount of \$2,600.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,300.00.

The Tenants testified that the rental house has two floors and contains a self contained two-bedroom suite in the lower part of the home. The Tenants testified that the Landlord needs to rent the entire home under a single tenancy agreement, so the parties agreed that they enter into the agreement as detailed above. The Tenants testified that the Landlord then entered into a separate tenancy agreement with different tenants for the lower two-bedroom self contained unit. The Tenants testified that their monthly rent is actually \$1,400.00 each month and the occupants living in the lower unit pay the Landlord \$1,200.00 each month for rent. The Tenants testified that the arrangement is that the Tenants collect the rent from the Tenants living below and provide it to the Landlord.

The Landlord testified that his insurance does not permit him to rent the property out as two separate units because its a single-family dwelling. The Landlord provided an undated copy of a letter from an insurance service provider indicating they do not permit coverage under the current policy for a sublease or sublet by a Tenant.

The Landlord provided testimony confirming that he signed a separate tenancy agreement with Ms. C.S. for the lower rental unit at \$1,200.00 per month.

10 Day Notice

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 5, 2020 ("the 10 Day Notice"). The 10 Day Notice indicates the Tenants have failed to pay \$1,300.00 that was due on October 1, 2020. The Landlord and Tenants provided a copy of the 10 Day Notice.

The 10 Day Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days.

The Landlord testified that the Tenants did not pay the full rent owing under the tenancy agreement within five days of receiving of the 10 Day Notice. The Landlord testified that he received \$1,300.00 from the Tenants for October 2020 rent. The Landlord submits that the Tenants owe him an additional \$1,300.00 for October 2020 rent.

The Landlord is requesting an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$1,300.00

In reply, the Tenants testified that they previously participated in a dispute resolution hearing where the Arbitrator ordered that they could deduct \$100.00 from a future rent payment. The Tenants testified that they paid the Landlord \$1,300.00 for October 2020 rent. The Tenants submitted that they are not responsible to pay the rent for the lower rental unit.

The Tenants had a witness, Ms. C.S. in attendance who provided affirmed testimony that she entered into a written tenancy agreement with the Landlord to rent the lower two-bedroom unit for \$1,200.00 each month. She testified that she paid the Landlord a \$600.00 security deposit.

The Tenants provided a copy of an email sent to the Landlord on September 7, 2020 asking him if he is still planning to move into the downstairs suite and asking direction on what the Landlord wants to do with the suite.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I make the following findings:

I find that it is more likely than not that the written tenancy agreement that indicates the Tenants are to pay \$2,600.00 in rent was for the benefit of the Landlord to satisfy his

house insurance policy requirements. I find that the Landlord entered into a separate tenancy agreement with occupants living in the downstairs suite that required them to pay the Landlord \$1,200.00 in rent each month. The Tenants living upstairs are not responsible to pay the rent the self-contained unit below.

I find that the Tenants were required to pay \$1,400.00 to the Landlord for October 2020 rent. After deducting \$100.00 as permitted by a previous Arbitrators order, I find that the Tenants only owed the Landlord \$1,300.00 for October 2020 rent. I accept the testimony of the Tenant and Landlord that \$1,300.00 was received by the Landlord for October 2020 rent.

The Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 5, 2020 for is cancelled.

I dismiss the Landlord's application for an order of possession and monetary order due to unpaid October 2020 rent.

The tenancy will continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid for the application for dispute resolution. I authorize the Tenants to deduct \$100.00 from one (1) future rent payment.

### Conclusion

The Tenants did not fail to pay the rent owing under the tenancy agreement for the month of October 2020.

The Landlords 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 5, 2020 is cancelled and the Landlord's application is dismissed.

The tenancy will continue until ended in accordance with 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: January 12, 2021