



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an order of possession for landlord's use of property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for 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 tenant for the cost of the application.

Both tenants and the landlord attended the hearing, and the landlord was represented by an agent. The landlord also called one witness. One of the tenants, the landlord's agent and the landlord's witness each gave affirmed testimony, and the parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an order of possession for landlord's use of property?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- 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?

## Background and Evidence

The landlord's agent testified that this fixed term tenancy began on September 1, 2012 and expired on August 31, 2013. A copy of the tenancy agreement has been provided which states that at the end of the fixed term the tenancy may continue on a month-to-month basis or another fixed length of time, and the tenants still live in the rental unit. Rent in the amount of \$3,600.00 per month is payable on the 1<sup>st</sup> day of each month, and rent for September and October, 2014 remain outstanding. On August 14, 2012 the landlord collected a security deposit from the tenants in the amount of \$1,800.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

On June 23, 2014 the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property by registered mail. A copy of the notice has been provided and it is dated June 10, 2014 and contains an effective date of vacancy of August 31, 2014. Both pages of the 2-page form have been provided and page 2 sets out the reason for issuing it: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." The landlord's agent testified that she is the daughter of the landlord and will be moving into the rental unit. The landlord's agent currently resides in a different municipality and the rental unit is much closer to her place of employment. The landlord also owns another property in the same municipality as the rental unit, but it is currently for sale.

The landlord does not speak English and an agent who will testify at this hearing has been assisting the landlord with the tenancy. The landlord seeks an order of possession so the landlord's daughter can reside in the rental unit.

The landlord's witness testified that she assists the landlord with the tenancy and helped the landlord prepare the tenancy agreement; the landlord does not speak English. The tenancy agreement was extended by a written addendum dated August 17, 2013, a copy of which has also been provided, which extends the fixed term to August 31, 2014. That addendum also states that 1 ½ months of rent is waived which was provided during September and October, 2013.

The witness further testified that when the notice to end tenancy was issued, the landlord did not provide an address of the landlord on the document because the landlord does not want the tenants to know her address. The tenants have the phone number and email address of the witness and know to contact her if needed. The tenancy agreement does not contain an address of the landlord either.

After the notice to end tenancy was issued, the landlord compensated the tenants as required by not collecting any rent for August, 2014 assuming the tenants were moving out. The tenants did not dispute the notice, and an address for service of the landlord is written on the Landlord's Application for Dispute Resolution which the tenants have received. Now the tenants owe for August, September and October, 2014, for a total of \$10,800.00.

The tenant testified that emails were sent to the landlord's witness asking for a phone number and address. The landlord and the tenant both speak the same language, and the parties and the landlord's daughter have been very friendly and cordial. The landlord's witness has not responded to any emails, phone calls or text messages. The only response received is the Application for Dispute Resolution and notice of this hearing.

The tenant further testified that the tenants would have disputed the notice to end tenancy, and they would like to stay in the rental unit, but have been unsuccessful in obtaining an address to serve the landlord with an application, and have been unsuccessful in having any communication with the landlord or the landlord's agents.

The tenant also testified that rent for August was paid by cheque, but the landlord hasn't yet cashed it. The tenant also offered rent for September and October, 2014 but the landlord said to wait until after this hearing.

### Analysis

The *Residential Tenancy Act* states that when a tenant is served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, the tenant has 15 days to dispute the notice by filing an application for dispute resolution and serving a copy of it on the landlord. The tenant cannot do that if the tenant does not have an address to serve the landlord because the tenant must serve it within 3 days of filing it with the Residential Tenancy Branch. In this case, the tenancy agreement does not contain an address for service nor does the notice. The landlord's witness testified that an address was contained in the Landlord's Application for Dispute Resolution, but the tenants were served with the notice to end the tenancy on June 23, 2014 by registered mail, which is deemed to have been served 5 days later, or June 28, 2014. Therefore, the tenants only had until July 13, 2014 to dispute the notice and did not receive any documentation providing an address for the landlord until sometime after September 2, 2014, the date the landlord filed the application for dispute resolution. Therefore, I find that the landlord is not entitled to an order of possession based on the notice to end tenancy.

The tenant testified that the landlord has a rent cheque for August, 2014 and was offered rent for September and October, 2014 but refused it until after this hearing had concluded, and the landlord's agents did not dispute that. The tenant also testified that they want to stay in the rental unit and are fully prepared to pay the rent for all of the months. The hearing has now concluded, and having found that the landlord is not entitled to an order of possession, I order the tenants to ensure all rental arrears are paid. If the tenants fail to pay the rent, the landlord will be at liberty to issue a notice to end tenancy for unpaid rent.

Since the landlord has not been successful with the application and the tenancy is continuing, I decline to order that the landlord keep the security deposit at this time. Further, since the landlord has not been successful, the landlord is not entitled to recovery of the filing fee.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

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: October 22, 2014

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Residential Tenancy Branch

