



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes FF, MNDC, MNR, MNSD, OPR (Landlords's Application)  
CNR (Tenant's Application)

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application. The Tenant sought an Order canceling a Notice to End Tenancy for Unpaid Rent or Utilities issued on April 15, 2015 (the "Notice").

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. A letter from the Tenant's witness had been submitted, but was not available to me during the hearing. As the witness testified, reference to the letter was not necessary. No other issues with respect to service or delivery of documents or evidence were raised.

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.

### Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on non payment of rent?
2. Are the Landlords entitled to monetary compensation from the Tenant?
3. Should the Notice be cancelled?

Background and Evidence

J.P. testified on behalf of the Landlords. He stated that the tenancy began on July 5, 2013. At that time, the Tenant was residing in the main floor of an up-down two unit residential home. The Landlords purchased the home which was in foreclosure proceedings. The Tenant, prior to paying rent to the Landlords rent, paid \$500.00 in rent to the bank holding the mortgage on the home.

J.P. stated that the Tenant moved from the main floor to the upper rental unit when the Landlords took possession. At that time the Tenant was granted a free month's rent for painting the upstairs rental unit and was also paid \$1,000.00 for painting the main floor.

J.P. testified that no written tenancy agreement existed, although the monthly rent was agreed upon at the time to be \$600.00. The Landlords further testified that the Tenant did not pay a security deposit.

According to J.P., the Tenant then unilaterally decided that his monthly rent was only \$500.00, that he had overpaid, and that he would deduct an amount from his monthly rent until the overpayment was paid in full.

In April of 2015, the Tenant only paid \$400.00, rather than the \$600.00 monthly rent and in response the Landlords then issued the Notice, indicating that \$200.00 was owed as of April 1, 2015.

Introduced in evidence was a handwritten document prepared by the Landlords listing the Tenant's payments and which indicated the Tenant made rental payments in the amount of \$600.00 since August 2013 until April 2015 when the Tenant unilaterally reduced his payments to \$400.00 per month.

Also introduced in evidence was a typed document dated May 20, 2013 signed by both Landlords and the Tenant and which indicated that the rental cost would be "\$600.00 per month plus utilities". The typed figure "\$600.00" was crossed out and the figure "\$500.00" was handwritten. Three initials were placed by this alteration.

The May 20, 2013 document further provided as follows:

"Should the property Title transfer to the [Landlords] it is the intent of both parties to enter into a formal tenancy agreement on or prior to July 31, 2013."

The Landlords alleged that the May 20, 2013 document was "falsified" and that they did not agree to, or initial the change from \$600.00 to \$500.00. The Landlord, R.P., wrote on the

document that they do not recall signing the form and reiterated that the “rent has always been \$600.00.” R.P. further testified that they did not charge the Tenant more when he had other people living with him.

The Tenant testified on his own behalf. He stated that the rent was always \$500.00 and he only paid \$600.00 when he had a roommate and that he did so “out of the goodness of [his] heart”. He further testified that he paid the extra \$100.00 to “be a nice guy” and that he always expected the Landlords to honour the agreement that he pay only \$500.00 when he lived alone. The Tenant testified that as of October 2014 he no longer had a roommate and was in fact living alone.

The Tenant confirmed that he reduced his April and May payments to \$400.00 as he had overpaid since October 2014 and was trying to recover the amounts he had overpaid. He also confirmed that he had not paid his June rent as of the date of the hearing (June 2) but that he “had the money” and was simply waiting to see what the outcome of the hearing would be.

The Tenant alleged that the Landlords were lying with respect to the May 20, 2013 letter as he says the Landlords was well aware that the rent amount had been changed to \$500.00 and that they agreed to this change when they signed the document. The Tenant confirmed that the realtor, M.T. witnessed their signature and was prepared to give evidence. He also confirmed that a letter from M.T. had been submitted to the Branch the day prior to the hearing. As noted previously, that letter was not available to me during the hearing, nor was it considered in this my decision.

The realtor, M.T. ,was called to testify by the Tenant. She testified that she did not draft the May 20, 2013 as it was drafted by another realtor, S.K., who acted as the Landlords’ agent. She stated that she witnessed the Landlords and the Tenant sign the letter. She further confirmed that the rent was reduced from \$600.00 per month to \$500.00 as a result of verbal discussions and that the change was made by S.K. prior to the Landlords and Tenant signing. M.T. stated that she understood the May 20, 2013 letter to be an “interim agreement” that was to be replaced by a comprehensive residential tenancy agreement by the end of July 2013.

In response to M.T.’s testimony, the Landlord, R.P. testified that she did not remember signing the May 20, 2013 letter, that “things were hectic” at the time they purchased the rental home, and that they probably forgot. She also stated that she looked through her documents in preparation for this hearing and confirmed that they did not have a copy of this letter prior to receiving it from the Tenant.

R.P. stated that in any case, after signing this letter, the Landlords and the Tenant agreed that the rent would be \$600.00 not \$500.00 and that this was confirmed by a handshake. She also stated that the \$100.00 was not “extra” as the rent was always \$600.00. She further stated that the Tenant only had others living with him for short periods of time. Finally, R.P. stated that she did not have any argument from the Tenant regarding the \$600.00 rent amount in the two years

he has lived in the rental unit aside from when he unilaterally reduced rent to \$400.00 in April of 2015.

### Analysis

The Tenant alleges that since he has been living alone since October 2014, that he has overpaid rent in the amount of \$100.00 per month for the months October, November and December 2014 as well as January, February and March 2015 such that he has paid a total of \$600.00 more than the agreed upon rent of \$500.00. The Tenant submits that the result is that he does not owe any rent to the Landlords and accordingly the Notice should be cancelled.

He further argues that as he paid \$400.00 in April, at the time the Notice was issued, he was in a credit position in the amount of \$500.00.

As the Tenant paid \$400.00 in May, he further submits that his June 2015 rent should only be \$100.00 as he has a credit of \$400.00 from his May 2015 payment.

I accept the evidence of the realtor, that the May 20, 2013 agreement was an interim agreement and that the intention of the parties was to enter into a formal written tenancy agreement. The responsibility to prepare such a written agreement falls squarely on the shoulders of the Landlords as they should have entered into such a written tenancy agreement and finalized matters with the Tenant.

I find that the only agreement the parties came to in writing was the May 20, 2013 agreement which provided that monthly rent was \$500.00. I accept the evidence of the real estate agent that the alteration was completed before the parties signed.

I expect the Tenant only recently located the May 20, 2013 letter. Further, I accept the Landlords' explanation that they forgot they signed this letter and their apology for their mistaken belief that the Tenant falsified the May 20, 2013 letter.

Additionally, I accept that the parties had an implied agreement that the Tenant was to pay an additional \$100.00 per month when he had an additional occupant. It appears that from August of 2013 to September 2014 the Tenant was satisfied with the agreement, and the additional payment of \$100.00. I find that he is not entitled to any sort of credit for that time period. Why he paid \$600.00 per month after he began living alone only shows that both parties were confused as to the amount of rent to be paid.

Based on the foregoing and on a balance of probabilities, I find that the Notice should be cancelled and the Landlords' request for an Order of Possession and monetary compensation should be dismissed. The tenancy shall continue until ended in accordance with the *Act*.

I find that the parole evidence rule applies to these circumstances. The documentary evidence confirms that the parties agreed to rent in the amount of \$500.00 and this agreement cannot be altered by oral testimony. In the absence of fraud, duress or mutual mistake, the law preserves the written document as the final expression of the parties' agreement with respect to the amount of rent to be paid. The parties did not make a mutual mistake in drafting the written agreement, although it appears as though they may have forgotten about its existence. Nevertheless, this does not invalidate the written agreement on the amount of rent to be paid.

I find that the amount of rent to be paid is \$500.00 per month. Based on the parties' behaviour and business practices, I find that the rent is \$600.00 if and when the Tenant has one additional occupant.

The Tenant's calculation with respect to the outstanding rent is confirmed as follows:

Month	Rent owing	Rent paid	difference
October 2014	\$500.00	\$600.00	+ \$100.00
November 2014	\$500.00	\$600.00	+ \$100.00
December 2014	\$500.00	\$600.00	+ \$100.00
January 2015	\$500.00	\$600.00	+ \$100.00
February 2015	\$500.00	\$600.00	+ \$100.00
March 2015	\$500.00	\$600.00	+ \$100.00
<b>Total credit as of date of Notice</b>			<b>+ \$600.00</b>
April 2015	\$500.00	\$400.00	- \$100.00
May 2015	\$500.00	\$400.00	- \$100.00
June 2015	\$500.00	\$0.00	- \$500.00
<b>Total owing as of date of hearing for June 2015 rent</b>			<b>\$100.00</b>

As a result, the Tenant shall pay the sum of \$100.00 for rent for June 2015. Thereafter, the Tenant shall continue to pay \$500.00 per month in rent, provided that he does not have an additional occupant. Should the Tenant have an additional occupant, his rent shall be \$600.00. The rent payable shall only be increased in accordance with the *Act*.

The parties are encouraged to mutually agree upon a written residential tenancy agreement to ensure such disputes are minimized or avoided in the future. Section 12 of the *Residential Tenancy Act* provides for the standard terms of every tenancy agreement, whether or not the agreement is in writing. Those terms are set out in section 13(1.1) of the *Residential Tenancy Regulation*.

The Landlords, having been unsuccessful in this hearing, are not entitled to recover the filing fee.

Conclusion

The Landlords failed to prove rent was outstanding. The Notice is cancelled and the tenancy shall continue until ended in accordance with the *Act*. The Landlords' request for an Order of Possession pursuant to section 55 and monetary compensation pursuant to sections 38, 67 and 72 are 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: June 03, 2015

---

Residential Tenancy Branch

