



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      FF, MNR, OPR, CNR, LRE, MNDC, OLC

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

### Landlords application

This is a request for an Order of Possession based on a Notice to End Tenancy for non-payment of rent, and a request for an order for that outstanding rent plus the filing fee.

### Tenants application

First of all it is my decision that I will not deal with all the issues that the tenants have put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with request to cancel Notice to End Tenancy, and I dismiss the remaining claims, with liberty to re-apply.

## Background and Evidence

The landlord's agent testified that:

- Rent is normally due on the first of each month, however they had agreed to allow the tenants to pay the October 2010 rent on the 15th of the month.
- The tenant did not pay the October 2010 rent on the 15th, and therefore on October 20, 2010 they served a 10 day Notice to End Tenancy for non-payment of rent, on the tenants.
- They have not agreed to any further extensions of time to pay the rent however to date the tenants have not paid any of the October 2010 rent, nor have they paid the November 2010 rent.

The landlords are therefore requesting an Order of Possession for as soon as possible, and an order for the outstanding October 2010, rent plus the filing fee.

The tenants testified that:

- The landlords had agreed to wait until October 20, 2010 for the October rent.
- Then on October 20, 2010 the landlords agreed to accept the October rent on October 27, 2010.
- They were unable to meet on October 27, 2010 however they subsequently met on October 31, 2010 and since they had filed a substantial monetary claim against the landlords, it was agreed between the tenants and the landlords that all parties would wait for the dispute resolution hearing before any further rent was paid.

The tenants are therefore requesting that the Notice to End Tenancy be cancelled as they have always been willing to pay the outstanding rent.

In response to the tenant's testimony the landlord's agent testified:

- They did not agree to an extension to October 20, 2010 to pay the rent, nor did they agree to a further extension to October 27, 2010 to pay the rent.
- The tenants claim that they are willing to pay the rent is not true, they continue to refuse to pay any further rent.

In response to the landlord's agent the tenants further testified:

- The agent was not present for any of the agreements and therefore has no direct evidence as to what was agreed to by the landlords.

## Analysis

When a tenant is given a 10 day Notice to End Tenancy for non-payment of rent they have 5 days in which to either pay the outstanding rent or apply for dispute resolution to dispute the Notice to End Tenancy.

In this case the tenants did not pay the outstanding rent, but they did apply for dispute resolution within the five day time limit; however it is my decision that they have not shown reasonable grounds to set this Notice to End Tenancy aside.

The tenants claim that they were always willing to pay the outstanding rent however they have provided no evidence to show that it was offered to the landlords or that the landlords ever refuse to accept it.

Further although the tenants claim that the landlords had agreed to numerous extensions of time to pay the rent, and had further agreed to wait for the dispute resolution hearing before requiring any further rent be paid, they have provided insufficient evidence to meet the burden of proving these claims.



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After reading all the evidence supplied by the parties is my belief that the tenants have refused to pay the rent because they believe they have a substantial monetary claim against the landlords; however even if the tenants believe they have a substantial monetary claim against the landlords, they have no right to withhold the rent unless they have an order from a dispute resolution officer allowing them to do so.

Therefore I will not be setting the Notice to End Tenancy aside, and will be issuing an Order of Possession to the landlords and an order for the outstanding rent and filing fee.

## Conclusion

### Tenant's application

The tenant's application to have the Notice to End Tenancy cancelled is dismissed without leave to reapply.

As stated earlier the remainder of the tenants application is dismissed with leave to reapply.

### Landlords' application

I have issued an Order of Possession to the landlords that is enforceable two days after service on the tenants, and have issued a monetary order for the full October rent of \$1100.00 and for the \$50.00 filing fee for a total order of \$1150.00.

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: November 22, 2010.

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Dispute Resolution Officer