

Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the Tenant: CNR

For the Landlord: OPR, MNSD, MNR, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The Landlord applied for a monetary order for unpaid rent and to keep all or part of the security deposit, for an order of possession and to recover the filing fee.

The parties and their witnesses appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

Issue(s) to be Decided

Are the Tenants entitled to cancel a notice to end tenancy for unpaid rent?

Have the Tenants breached the *Residential Tenancy Act* (the "*Act*") or tenancy agreement, entitling the Landlord to an order for monetary relief and for an order of possession?

Background and Evidence

This tenancy started on January 15, 2006, monthly rent began at \$725.00 and is currently \$750.00, and the Tenants paid a security deposit of \$362.50 on January 15, 2006.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the Landlord proceeded first in the hearing to support the issuance of the Notice.

The Landlord testified and supplied evidence that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent on May 12, 2011, by posting on the door. The Notice stated the amount of unpaid rent as of May 1, 2011, was \$1,807.50 and the stated effective move out date was listed as May 25, 2011.

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The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the Tenants had five days to dispute the Notice.

The Landlord submitted that the original amount listed was incorrect and the actual amount of unpaid rent was \$1,607.50, which was listed in a subsequent notice and delivered to the Tenants.

The Landlord testified that the Tenants have not paid rent since the issuance of the Notice, and that their total monetary claim is \$1,657.50., which includes rent for April and May and the filing fee.

The Tenant agreed that she did not pay rent after the Notice was issued, but did offer to pay the Landlord \$500.00 in May, but this offer was refused.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Landlord's Application

Under section 26 of the Act, the Tenants are required to pay rent in accordance with the terms of the tenancy agreement and are not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the Landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the Tenants disputed the Notice within five days. Where a Notice is disputed, the tenant must be able to show that he/she does not owe the Landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I am satisfied that the Tenants owed the Landlord rent when the Notice was issued, that they did not pay all or any of the rent owed to the Landlord within five days of receiving the Notice and the Tenants did not establish that they had the legal right to withhold the rent owed. Therefore, I find the tenancy has ended for the Tenants' failure to pay rent and the Landlord is entitled to regain possession of the rental unit. The Landlord is provided with an Order of Possession effective, by the agreement of the Landlord, 4 **days** after service on the Tenants.

This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$1,657.50 comprised of outstanding rent for April and May \$1,607.500 and the \$50.00 fee paid by the Landlord for this application.

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At the Landlord's request, I allow the Landlord to retain the security deposit and interest in the amount of \$375.26 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$1,282.24.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Tenants' Application

As I have upheld the Landlord's Notice to End Tenancy for Unpaid Rent for the foregoing reasons, I **dismiss** the Tenants' application to cancel the Notice, without leave to reapply.

Conclusion

The Landlord is granted an Order of Possession and a monetary order in the amount of \$1,282.24.

The Tenants' application is dismissed, without leave to reapply.

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 15, 2011.	
	Residential Tenancy Branch