



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNC, CNR, CNL, FF, MNR, MNSD, OPC, OPR

### Introduction

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.

The tenant's amended application is a request to cancel a Notice to End Tenancy that was given for cause, a request to cancel a Notice to End Tenancy that was given for landlord use, and request to cancel a 10 day Notice to End Tenancy for nonpayment of rent.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a Monetary Order for outstanding rent, a request for recovery of the \$50.00 filing fee, and a request to retain the full security deposit towards the claim.

The tenants claim that they did not receive the landlord's application for dispute resolution; however I accept the landlord's testimony that the documents were placed in the tenant's mail box on November 19, 2015 and therefore they are considered served three days later.

### Issue(s) to be Decided

The issue I dealt with first was the 10 day Notice to End Tenancy and whether or not to cancel or uphold it, and whether or not there was rent outstanding.

### Background and Evidence

The parties agree that the landlord served the tenants a 10 day Notice to End Tenancy by placing the notice in the tenants mail box on November 2, 2015.

The landlord testified that the tenants failed to pay the November 2015 rent in the amount of \$1200.00 and therefore he served the 10 day Notice to End Tenancy.

The landlord further testified that the tenants have failed to comply with a 10 day Notice to End Tenancy and have failed to pay any further rent. The landlord is therefore requesting an Order of Possession for as soon as possible and an Order for the outstanding rent.

The tenants testified that they have not paid the rent for the months of November 2015 and December 2015, however they did offer one half a month rent to the landlord; however he or refuse to accept that one half months' rent.

The tenants further testified that they have withheld the remainder of the rent because they believe the landlord has not complied with the tenancy agreement. The tenants are therefore requesting that the Notice to End Tenancy be canceled.

### Analysis

Section 26 of the Residential Tenancy Act states:

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case the tenants did not have any right to deduct any rent and therefore by doing so they put their tenancy at risk, because section 46 of the Residential Tenancy Act states:

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The landlord in this case therefore had the right to give a Notice to End Tenancy, because the tenants had failed to pay the rent that was due on November 1, 2015.

Section 46 also allows the tenants a five-day grace period to pay the outstanding rent and thereby void the Notice to End Tenancy, however the tenants did not pay that outstanding rent, only offering to pay one half the outstanding rent.

It is my decision therefore that I will not cancel the Notice to End Tenancy and I therefore dismiss the tenant's application.

I allow the landlord's application for an Order of Possession and I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenants.

I also allow the landlords request for an Order for the outstanding rent which now totals \$2400.00. I therefore Order that the landlord may retain the full security deposit of \$600.00 towards that claim and pursuant to section 67, I have issued a Monetary Order for the difference.

I also Order that the tenants bear the \$50.00 filing fee paid by the landlord.

Having issued an order of possession based on the 10 day Notice to End Tenancy there's no need for me to deal with the request to cancel a one month Notice to End Tenancy, or a two month Notice to End Tenancy.

### Conclusion

I have issued an Order of Possession that is enforceable two days after service on the tenants.

I have issued a Monetary Order against the tenants in the amount of \$1850.00.

I have dismissed the tenant's application in full 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: December 16, 2015

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Residential Tenancy Branch

