



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlord attended the hearing with an agent, however the line remained open while the phone system was monitored for 10 minutes and no one for the tenants attended. Therefore, I dismissed the tenants' application without leave to reapply.

The landlord and the landlord's agent each gave affirmed testimony with respect to the notice to end the tenancy, seeking an Order of Possession and a monetary order.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?

### Background and Evidence

The landlord testified that rent in the amount of \$1,650.00 per month is payable under the tenancy agreement. The tenants are currently in arrears for the months of November and December, 2015 as well as January, 2016, totalling \$4,950.00. The parties also had a verbal agreement for late payments of rent, however it is not specified in the tenancy agreement.

The landlord's agent attended the rental unit on December 3, 2015 for a scheduled inspection and neither of the tenants were there. The landlord's agent left a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the kitchen counter. A copy of the

notice has been provided and it is dated December 3, 2015 and contains an effective date of vacancy of December 15, 2015 for unpaid rent in the amount of \$3,550.00 that was due on December 1, 2015. The amount includes late payment fees.

### Analysis

The *Residential Tenancy Act* states:

#### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act*. Having dismissed the tenants' application, I find that the landlord is entitled under the *Act* to an Order of Possession. Since the effective date of vacancy has passed, I grant the order on 2 days notice to the tenants.

During the course of the hearing, I suggested to the landlord that the landlord would also be entitled to a monetary order for the outstanding rental arrears, however, that legislation actually reads:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

(Underlining added) The landlord has not made an application for dispute resolution, and therefore Section 2(b) does not apply to this hearing. The landlord may make an application for dispute resolution claiming the unpaid rent.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

This order is final and binding and may be enforced.

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: January 26, 2016

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Residential Tenancy Branch