



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46; and
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67.

The tenants and landlord attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to provide affirmed testimony and present their evidence.

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 10 Day Notice therefore the tenants' monetary claim is dismissed with leave to reapply. I have addressed the remainder of the tenants' claim in the analysis and conclusion sections of this decision, below.

### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on February 1, 2016 on a month-to-month basis. Rent in the amount of \$1,600.00 is payable on the first of each month. The tenants remitted a security deposit

in the amount of \$800.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

The landlord testified that on August 10, 2016 he forwarded the 10 Day Notice, dated August 8, 2016 via registered mail to the tenants. The tenants confirmed receipt of the 10 Day Notice by registered mail. In accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the 10 Day Notice on August 15, 2016, the fifth day after its registered mailing.

The landlord testified that he has not received rent for August, September or October 2016. The tenants did not dispute rent remains unpaid for August, September and October 2016. The tenants attribute the lack of payment to the decline in their home business due to loud construction outside the rental unit.

### Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, whether or not the landlord complies with the *Act*. Based on the tenants' admission that rent was not paid for August, September and October 2016, I dismiss the tenants' application to cancel the 10 Day Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. Accordingly, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

### Conclusion

I grant an order of possession to the landlord effective two (2) days after service on the tenant.

The tenants' monetary claim is dismissed with 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: October 07, 2016

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Residential Tenancy Branch

