



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNR, ERP, FF, LRE, MNR (Tenants' Application)  
OPR, MNR, FF (Landlord's Application).

### Introduction

This hearing convened as a result of cross applications. In the Tenants' Application for Dispute Resolution, filed June 5, 2017, they sought the following relief:

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent issued May 30, 2017 (the "Notice");
- an Order that the Landlord:
  - make repairs to the rental unit pursuant to section 32; and,
  - make emergency repairs to the rental unit pursuant to section 33;
- an Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to section 70;
- an Order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and,
- recovery of the filing fee.

In the Landlord's Application for Dispute Resolution, filed June 8, 2017, the Landlord sought the following relief:

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent pursuant to section 67; and,
- recovery of the filing fee.

The hearing was originally scheduled for August 8, 2017, which could not proceed as scheduled. Branch records indicate that the Landlord was successfully contacted to re-schedule by the Residential Tenancy Branch although the Tenants were not.

By Interim Decision dated August 15, 2017 the hearing was adjourned to today's date, September 13, 2017. Both parties were informed of the hearing date by letters dated August 18, 2017.

The hearing was conducted by teleconference at 9:00 a.m. Only the Landlord, her spouse and a witness, called into the hearing. She gave affirmed testimony and was provided the

opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that she served the Tenants with the Notice of the original Hearing and her Application materials on June 10, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Landlord testified that the Tenants signed for the registered mail packages on June 27, 2017.

I find that the Tenants were served with the Landlord's application, as well as notice of the adjourned hearing date. I therefore proceeded with the hearing in their absence.

### Preliminary Matter

The Tenants failed to call into the hearing.

Rule 7 of the *Rules of Procedure* provides in part as follows:

#### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

...

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the Tenants and in the absence of the Tenants' participation in this hearing, I dismiss the Tenants' claim without leave to reapply.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation for unpaid rent?
3. Should the Landlord recover the filing fee?

### Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord testified that this tenancy began February 1, 2017. Monthly rent was payable in the amount of \$1,800.00 per month and the Tenants paid a security deposit of \$900.00.

The Landlord testified that the Tenants failed to pay the rent for May 2017 and she issued the Notice which is the subject of these proceedings indicating \$1,800.00 was owing as of May 1, 2017. The Landlord stated that she attempted to personally serve the Tenants the Notice but they refused to answer the door; she stated that she then served the Notice by posting it to the rental unit door on May 30, 2017. Her witness attended the hearing for the purposes of confirming this service.

Section 90 of the *Residential Tenancy Act* provides that service by posting to the door is effective 3 days after posting; therefore I find the Tenants were served as of June 2, 2017.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, June 7, 2017. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. The Tenants applied for dispute resolution on June 5, 2017; however, as they failed to call into the hearing I dismiss their claim without leave to reapply.

The Landlord testified that the Tenants failed to pay rent for May, June, July, August, September such that at the date of the hearing \$9,000.00 is owing for unpaid rent.

### Analysis

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

The Tenants have not paid the outstanding rent and did not attend the hearing to dispute the Notice; they are therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the *Act*, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenants have some authority under the *Act* to not pay rent. In this situation the Tenants had no authority under the *Act* to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two 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 \$9,100.00 comprised of \$9,000.00 in outstanding rent and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$900.00 in partial satisfaction of the claim and I grant the Landlord a Monetary Order under section 67 for the balance due of **\$8,200.00**.

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

### Conclusion

The Tenants failed to pay rent and did not attend the hearing to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a Monetary Order in the amount of **\$8,200.00** for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: September 13, 2017

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Residential Tenancy Branch