



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MT, CNR, CNC, MNDC, OLC, LRE

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (the Act).

On February 3, 2018, the Landlords applied requesting an order of possession based on issuance of a 1 Month Notice To End Tenancy For Cause dated February 3, 2018, and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2018.

On February 23, 2018, the Tenants applied for more time to dispute a notice to end tenancy. The Tenants also applied for the following:

- to cancel a 1 Month Notice To End Tenancy For Cause dated February 3, 2018;
- for compensation for damage or loss
- for the Landlord to comply with the Act
- to suspend or set conditions on the Landlords right to enter the rental unit.
- to recover the cost of the filing fee.

On March 6, 2018, the Tenants submitted an amendment to their application to include a dispute of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2018.

The matter was set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants testified that they did not serve a copy of the 22 pages of written submissions to the Landlord. The Landlords have not had an opportunity to consider or respond to the Tenant's evidence. Pursuant to the Residential Tenancy Branch Rules of Procedure, the Tenant's documentary evidence is excluded from the hearing. The Tenants were given the opportunity to provide direct testimony on the contents of the evidence.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator to dismiss issues with or without leave to reapply.

The Tenant's Application includes a request to cancel two different notices to end tenancy. I find that the most important issue to deal with during this hearing are the notices to end tenancy, and whether or not the tenancy will continue. Therefore, I will deal with the Tenant's request to cancel the notices to end tenancy, and the Landlords request for an order of possession, and I dismiss the Tenant's claim for compensation against the Landlord with liberty to re-apply.

With respect to the Tenant's request for more time to dispute a notice to end tenancy, section 66 of the Act addresses extensions to time limits established by the Act. This section provides that the director may extend a time limit established by this Act only in exceptional circumstances.

The Tenants were asked to provide reasons why they did not dispute the 1 Month Notice within 10 days of receiving the Notice. The Tenant testified that she waited until the last day to dispute the 1 Month Notice because she was trying to reach a settlement with the Landlord. She testified that when she went to dispute the 1 Month Notice she needed income verification for the fee waiver and was not able to provide it until February 21, 2018.

### Issues to be Decided

- Has the tenancy ended due to non-payment of rent?
- Does the Landlord have sufficient cause to end the tenancy?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Tenants and Landlord testified that the tenancy began in May 2017, as a month to month tenancy. Rent in the amount of \$700.00 is due each month in installments of \$350.00 to be paid on the first day and the 16<sup>th</sup> day of each month. There is no written tenancy agreement.

The Landlord testified that the Tenants failed to pay the rent when it was due under the tenancy agreement.

The Landlord testified that on March 2, 2018, the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2018.

The 10 Day Notice states that the Tenants have failed to pay rent in the amount of \$1,400.00 which was due on February 1, 2017. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant did not pay the rent due under the tenancy agreement within 5 days of receiving the 10 Day Notice. The Landlord testified that the Tenant actually owed \$1,050.00 as of March 2, 2018. The Landlord testified that she wrote \$1,400.00 on the 10 Day Notice following the advice of the tenancy branch.

The Landlord testified that the Tenant offered a payment of \$700.00 to the Landlord on March 5, 2018; however, the Landlord refused to accept the payment because it was not the full amount of \$1,050.00 that was owing under the tenancy agreement.

The Landlord testified that the Tenants have not paid any rent to the Landlord since receiving the 10 Day Notice. The Landlord testified that The Tenants owe the following amounts of unpaid rent:

- February 1, 2018, in the amount of \$350.00
- February 16, 2018 in the amount of \$350.00
- March 1, 2018, in the amount of \$350.00
- March 16, 2018, in the amount of \$350.00
- April 1, 2018, in the amount of \$350.00

The Tenants disputed the Notice on March 6, 2018 within the required timeframe.

In response to the Landlord's testimony, the Tenants testified that the \$700.00 they offered the Landlord on March 5, 2018, was to pay for February 2018, rent. The Tenants testified that he did not pay the \$350.00 of rent that was due on March 1, 2018.

The Tenants acknowledged that they have not paid the rent since receiving the 10 Day Notice on March 2, 2018. The Tenants submitted that their hours of work were reduced and they have not had the money to pay the rent. The Tenants submitted that they had no legal right to withhold payment of the rent.

The Landlord seeks an order of possession and a monetary order in the amount of \$1,750.00 for unpaid rent.

### Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants failed to pay all the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2018.

I find that the Tenants failure to pay the rent is a fundamental breach of the tenancy agreement and a breach of section 26 of the Act.

I dismiss the Tenants' application to cancel the 10 Day Notice dated March 2, 2018.

Under section 55 of the Act, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find that the Tenants owe the Landlords \$1,750.00 for unpaid rent for the above mentioned dates.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I grant the Landlords a monetary order in the amount of \$1,850.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Since the tenancy is ending based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, there is no need to consider the validity of the 1 Month Notice To End Tenancy For Cause dated February 3, 2018.

### Conclusion

The Tenants fundamentally breached the tenancy agreement by failing to pay the rent due under the tenancy agreement within 5 days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlords are granted an order of possession effective 2 days after service on the Tenants and are granted a monetary order for unpaid rent and the filing fee in the amount of \$1,850.00

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: April 11, 2018

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Residential Tenancy Branch