



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPR, OPC, MNR, CNR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause and/or for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants' applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) filed two applications for dispute which were served upon the tenants by posting them both to the door of the rental unit. The tenants confirmed receiving both notice of hearing package(s) posted to the rental unit door. Both parties also confirmed that the tenants' notice of hearing package and their submitted documentary evidence was served to the landlord via Canada Post Registered Mail on February 26, 2018. As such, I find that both parties have been sufficiently served as per section 90 of the *Act*.

The landlord claims that the first application for dispute submitted on February 9, 2018 for an order of possession as a result of a 1 Month Notice for Cause and a monetary claim for unpaid rent of \$35,000.00 and recovery of the \$100.00 filing fee also contained the documentary evidence submitted by the landlord. The tenants dispute this claim stating that no documentary evidence was provided with the hearing package. The landlord was unable to provide any proof of service of the documentary evidence. As such, I find on a balance of probabilities that the

landlord's documentary evidence was not properly served as per section 88 of the Act. The landlord's documentary evidence is excluded from consideration in this hearing.

The landlord also claims that the second application for dispute submitted on March 7, 2018 for an order of possession as a result of a 10 Day Notice for Unpaid Rent and a monetary claim for unpaid rent of \$35,000.00 and recovery of the \$100.00 filing fee also contained the documentary evidence submitted by the landlord. The tenants dispute this claim stating that no documentary evidence was provided with the hearing package. The landlord was unable to provide any proof of service of the documentary evidence. As such, I find on a balance of probabilities that the landlord's documentary evidence was not properly served as per section 88 of the Act. The landlord's documentary evidence is excluded from consideration in this hearing.

#### Preliminary Issue(s)

At the outset it was clarified with both parties that the landlord had made two separate applications for disputes scheduled together for this hearing in which both request monetary claims of \$35,000.00 each in unpaid rent. Both parties confirmed their understanding and that these were duplicate monetary claims and could be dealt with as one. As such, the landlord's monetary claim for \$35,000.00 with the first application for dispute is dismissed and shall be dealt with as part of the landlord's second application for dispute for unpaid rent.

At the outset it was also clarified with both parties that the tenants' request for an order for the landlord to provide services or facilities agreed upon, but not provided regarding access to the mailbox, cable and internet services were not related to the issue of unpaid rent. Both parties were informed that as per Residential Tenancy Branch Rules of Procedure 2.3, Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. In this regard I find that the tenants have applied for an order for the landlord to provide services or facilities (mailbox access, cable and internet services). As this section of the tenants' application is unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent, I dismiss this section of the tenant's claim with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The hearing shall proceed on the landlord's application for an order of possession for cause as a result of a 1 Month Notice and recovery of a \$100.00 filing fee; the landlord's second application for an order of possession and a monetary order for unpaid rent of \$35,000.00 and recovery of the \$100.00 filing fee; and the tenants' application for an order cancelling the 10 Day Notice.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?  
Is the landlord entitled to an order of possession for unpaid rent?  
Is the tenant entitled to an order cancelling the 10 Day Notice?  
Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee(s)?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on October 1, 2009 on a fixed term tenancy ending on March 31, 2010 and then thereafter on a month-to-month basis as per the signed tenancy agreement dated September 17, 2009. The monthly rent was \$3,000.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,500.00 and a furniture deposit of \$1,500.00 were paid on September 17, 2009.

The landlord stated that the tenants were served with the 1 Month Notice to End Tenancy issued for Cause in person on December 20, 2017. The 1 Month Notice sets out an effective end of tenancy date of January 31, 2018 and the reason selected was:

Tenant is repeatedly late paying rent.

No details of cause were provided.

The landlord stated that the tenants have not paid rent for over 1 year. The tenants disputed that a 1 Month Notice was not served and that they had discovered the landlord's application while they were filing their application to dispute the 10 Day Notice. The landlord claims that the tenants were served with the 1 Month Notice for Cause in person, but is unable to provide sufficient evidence to support this claim.

The landlord also seeks an order of possession and a monetary order for unpaid rent of \$35,000.00 which consists of unpaid rent for the entire year of 2017.

Both parties confirmed that the landlord served the tenants with a 10 Day Notice for Unpaid Rent dated February 19, 2018 by posting it to the rental unit door on February 20, 2018. The 10 Day Notice states that the tenants failed to pay rent of \$35,000.00 that was due on January 1, 2018.

The landlord claims that the tenants have failed to pay rent for over 1 year accruing rental arrears of \$35,000.00.

The tenants argued that an agreement was made with the landlord well over 1 year ago to not pay rent due to personal financial matters. The landlord disputed that no agreement was made, but that a deferral of rent payments was agreed to. The landlord clarified that the deferral of rent payments was to be only for a specified time. The tenants confirmed that the agreement was for deferral of rent payments. Neither party provided any evidence on the length of time for deferral of rent payments. The landlord stated that the tenants were notified that they could no longer allow an indefinite period for deferral of rent payments and that the 10 Day Notice dated February 19, 2018 was issued. The tenants disputed that no notification was given to the tenants. The landlord was unable to provide sufficient evidence of notification to the tenants that deferral of rent payments was no longer accepted.

### Analysis

Section 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

I find on a balance of probabilities that the landlord has not served the tenants with the 1 Month Notice dated December 20, 2017 as claimed. Although the landlord claims that the tenants were personally served with the 1 Month Notice, the tenants have disputed this claim. On this basis, I find that the landlord has failed to provide sufficient evidence to satisfy me that the tenants were properly served as per sections 88 and 89 of the Act. As such, the landlord's application is dismissed.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, both parties confirmed that rent were in arrears and owed to the landlord. However, both parties confirmed that an agreement was made where the tenants rent was deferred pending the outcome of the tenants personal financial circumstances. The landlord argued that verbal notification was given to the tenants that rent deferral was no longer acceptable after waiting more than 1 year. The tenants argued that no such notification was given by the landlord. On this basis, I find on a balance of probabilities that the landlord has failed to provide sufficient evidence that the tenants were provided proper notification that the deferral of rent was no longer acceptable. As such, the landlord's 10 Day Notice dated February 19, 2018 is set aside. The tenants' application to cancel the 10 Day Notice dated February 19, 2018 is granted. The tenancy shall continue. The landlord must provide full and

clear notification to the tenants that the agreement for deferral of rent is no longer acceptable and provide notification to the tenants that rent must be paid as agreed upon in the signed tenancy agreement.

Conclusion

The landlord's application for an order of possession for cause based upon the 1 Month Notice dated December 20, 2017 is dismissed for lack of service.

The tenants' application to cancel the 10 Day Notice dated February 19, 2018 is granted.

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 20, 2018

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Residential Tenancy Branch