



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR

### Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlords' application is seeking orders as follows:

1. For an order of possession; and
2. For a monetary order for unpaid rent.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent;
2. For a monetary order for loss or other money owed;
3. To suspend or set conditions of the landlord's right to enter; and
4. To allow the tenant to change the locks.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on the tenants' Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy. The balance of the tenants' application is dismissed, with leave to reapply.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. The tenant WB requested that this matter be adjourned to be allowed to submit additional evidence. However, I find the tenant haD from March 6, 2018 to obtain and submit any documents they wish to rely

upon at the hearing. I find any adjournment would be unfair and prejudicial to the other party. Therefore, I have denied the adjournment or to allow any further evidence to be submitted at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

#### Issue to be Decided

Should the Notice be cancelled?

#### Background and Evidence

The tenant WB testified that they received the Notice. WB stated that they gave money to their wife to pay the rent; however, they have no idea if it was paid to the landlords.

The tenant WB testified that they have a rent to own agreement with the landlords. The tenant stated that they are currently going through a divorce with their wife.

The landlords testified that the tenants have paid no rent for December 2017, January, February, March, April, and May 2018. The landlords seek a monetary order for unpaid rent in the amount of \$13,800.00 and an order of possession

The landlords testified that the co-tenant who is their daughter vacated the premises based on the 10 Day Notice to End Tenancy.

#### Analysis

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

In this case, the tenant alleged a rent to own agreement; however, the tenant provided no documentary evidence to support this, such as a land title document showing they have interest in the property greater than that of a tenant.

Further, the tenant refers to the payments as rent, which normally a rent to own agreement assigns a portion to rent and a portion go toward the purchase price of the property. The tenant did not provide any details of an agreed purchase price or an amount that was going towards the purchase price. Therefore, I am not satisfied that the tenant has proven that they have a rent to own contract with the landlords.

In this case, the tenants have not paid any rent to the landlord since December 2017, and are currently in rent arrears for six (6) months. I find the Notice is a valid Notice, remains in full force and effect.

I find the Notice is completed in accordance with the requirements of section 52 of the Act. Therefore, I dismiss the tenants' application to cancel the Notice.

I find that the landlords are entitled to an order of possession, pursuant to section 55 of the Act, 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. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I find that the landlords are entitled to a monetary order comprised of unpaid rent and the \$100.00 paid for the application, pursuant to section 67 of the Act, in the total amount of **\$13,900.00**. This order may be filed in the Province Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

### Conclusion

The tenants' application to cancel the Notice is dismissed. The balance of the tenant's application is dismissed with leave to reapply.

The landlord is granted an order of possession and a monetary order in the above noted amount.

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: May 16, 2018

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Residential Tenancy Branch