



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPR, MNDCL, MNRL, FFL (landlord); CNR FFT (tenant);**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10 Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice") pursuant section 46;
- A monetary order for unpaid rent pursuant to section 67;
- A monetary order for compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with a cross-application by the tenants under the Residential Tenancy Act (the *Act*) for the following:

- An order cancelling the Ten-Day Notice pursuant to Section 46(4);
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenants attended the hearing. The landlord attended the hearing with his agent MP ("the landlord"). Both parties were given full opportunity to be provide affirmed testimony, present evidence, cross examine the other party and make submissions. No issues of service were raised. I find each party was served with the Notice of Hearing and Application for Dispute Resolution of the other party pursuant to section 89 of the *Act*.

I note that Section 55 of *Act* requires that when a tenant submits an application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

*Preliminary Issue # 1*

The landlord explained that the application for a monetary order included an application for compensation for utility use by the tenants. Section 2.3 of the *Residential Tenancy Branch Rules of Procedure* (the “*Rules*”) states that 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.

I find that the claim pursuant to section 67 for compensation for utilities is not related to the landlord’s application for an order of possession and the landlord’s application in this regard is therefore dismissed with leave to reapply.

*Preliminary Issue # 2*

The landlord requested an amendment to the landlord’s claim to include unpaid rent due December 1, 2018. Rule 4 of the *Rules of Procedure* allow for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served. I find the landlord’s claim pre-dated the date on which rent for the month of December 2018 was due. Further to Rule 4, I find the tenants could reasonably have anticipated that the landlord would claim outstanding rent for December 2018. I accordingly allowed the landlord to amend the application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to section 46?

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72?

Are the tenants entitled to an order cancelling the Ten-Day Notice pursuant to section 46?

Are the tenants entitled to reimbursement of the filing fee pursuant to section 72?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The parties agreed on the following. The verbal tenancy agreement between the parties started in October 2014. The current monthly rent is \$850.00 payable on the first day of each month. The rental unit is located in the basement of the landlord's home. The tenants paid a security deposit at the beginning of the tenancy of \$350.00 which the landlord holds. The tenants have not provided written authorization to the landlord to apply the security deposit to outstanding rent.

The tenants acknowledge they have not paid rent from September to December 2018. The parties agreed that rent in the amount of \$3,250.00 is outstanding. The landlord submitted a Monetary Order Worksheet setting out the unpaid rent during the relevant portion of the tenancy.

The parties agreed that the landlord issued the Ten-Day Notice on October 27, 2018 and the tenants were personally served that day. A copy of the Notice was submitted in evidence. The tenants acknowledged they did not pay the rent within the five-day period. The tenants applied for dispute resolution on November 1, 2018.

The tenants continue to occupy the unit. They state they have not paid rent because the landlord refuses to provide receipts and has not done so throughout the tenancy. The landlord denied refusal to provide receipts and said receipts would have been provided if requested. The tenants state they want to vacate the unit but have been unable to find alternate accommodations.

The landlord requests an order of possession, a monetary award for \$3,250.00 for rent outstanding to December 2018 and reimbursement of the filing fee, for a total of \$3,350.00.

### Analysis

I have reviewed all documentary evidence and testimony.

I find the landlord served the tenants with the Ten-Day Notice on October 27, 2018 in accordance with section 88 of the Act. I find the tenants disputed the Ten-Day Notice within the five-day period following service. I find the tenants owe rent in the amount of \$3,250.00 to the landlord. I find the tenants continue to occupy the unit.

Upon hearing the testimony of the parties including the acknowledgement of the tenants that they owe the rent claimed, I find the landlord has provided met the burden of proof on a balance of probabilities that the tenants owe the landlord the amount of rent claimed and the Ten-Day Notice was properly issued. I accordingly dismiss the tenants' application to cancel the Ten-Day Notice without leave to reapply.

As I have found the Ten-Day Notice complies with section 52 and I have dismissed the tenants' application to cancel the Notice, I therefore grant the landlord an order of possession effective two days after service pursuant to section 55.

As the parties agree the tenants owe the landlord \$3,250.00 for outstanding rent, I grant the landlord a monetary award in this amount.

As the landlord has been successful in the application, I grant the landlord reimbursement of the filing fee in the amount of \$100.00.

In summary, I grant the landlord a monetary order for **\$3,350.00** calculated as follows:

ITEM	AMOUNT
Award to landlord for outstanding rent	\$3,250.00
Reimbursement of filing fee	\$100.00
<b>Monetary Order</b>	<b>\$3,350.00</b>

Conclusion

I grant the landlord a monetary order in the amount of **\$3,350.00**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: December 05, 2018

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Residential Tenancy Branch