



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, ERP, OPR, MNR, FF

### Introduction

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

The landlord s' application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), issued on October 5, 2018; and
2. To have the landlord make emergency repairs.

### Landlord's application

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on November 2, 2018, a Canada post tracking number was provided as evidence of service. I have noted the tracking number of the covering page of this decision.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

#### Tenant's application

The tenant LD has listed KW and PB as tenants; however, KW and PB are not listed as tenants under the tenancy agreement. Therefore, I find KW and PB are occupants and have no legal rights under the Act. KW and PB were removed from the style of cause.

#### Issues to be decided

Should the Notice be cancelled?  
Are the landlords entitled to an order of possession?  
Are the landlords entitled to a monetary order?

#### Background and Evidence

##### Tenant's application

This matter was set for hearing by telephone conference call at 9:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlords.

Therefore, as the tenant did not attend the hearing by 9:40 A.M, and the landlord's agent appeared and was ready to proceed, I dismiss the tenant's application without leave to reapply.

##### Landlords' application

The landlord's agent testified that the tenant was served with the Notice on October 5, 2018 for outstanding rent in the amount of \$3,750.00. The agent stated that the tenant did not pay the outstanding rent within five (5) days and did not dispute the Notice, until October 30, 2018. This is past the effective date of the Notice.

The landlord's agent testified that the monthly rent of \$2,000.00 is payable on the first of each month. The agent stated that the tenant failed to pay rent for November 2018 and December 2018. The agent stated that on November 26, 2018, there were three

payment of \$375.00 for a total payment of \$1,125.00. The landlords seek to recover the unpaid rent in the amount of \$6,625.00.

The landlord's agent stated that they seek to offset the monetary order with the tenant's security deposit of \$1,000.00.

### Analysis

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

### Tenant's application

As I have dismissed the tenant's application, pursuant to section 55 of the Act I must grant the landlord an order of possession of the rental unit.

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice; I find Notice complies with section 52 of the Act.

Therefore, I find that the landlords are entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I accept the undisputed evidence of the landlord's agent that the tenant has failed to pay rent in accordance with their tenancy agreement. I find the tenant has breached section

26 of the Act. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$6,625.00**.

I find that the landlords have established a total monetary claim of **\$6,725.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$1,000.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$5,725.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable

### Conclusion

The tenant's application is dismissed without leave to reapply. The landlords are granted an order of possession and a monetary order. The landlord may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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 07, 2018

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Residential Tenancy Branch