



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, CNR, MNR, FF

### Introduction

The landlord and the tenants 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 tenants' application is seeking an order as follows:

1. To cancel a 10 Day Notice to End tenancy for Unpaid Rent issued on December 11, 2018.

### Landlord's application

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

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

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on December 20, 2018 and successfully delivered on December 22, 2018, Canada post tracking numbers were provided as evidence of service. I have noted the Canada post tracking numbers on the covering page of this decision

I find that the tenants have been duly served in accordance with the Act.

Furthermore, I am satisfied that the tenants were fully aware of the hearing, as their Application for Dispute Resolution was scheduled to be heard.

### Tenants' application

This matter was set for hearing by telephone conference call at 11:00 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 landlord. Therefore, as the tenants did not attend the hearing by 11:10 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenant's application without leave to reapply.

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

Is the landlord entitled to an order of possession?

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

### Background and Evidence

The tenancy began on December 1, 2018. Rent in the amount of \$2,800.00 was payable on the first of each month. The security deposit and pet damage deposit (the "Deposits") were not paid.

The landlord testified that the tenants gave them a cheque for December 2018 rent, and the Deposits; however, that was returned from the bank on December 5, 2018, stated that the account was closed.

The landlord testified that the tenants were served with the Notice on December 11, 2018. The landlord stated that although the tenants disputed the Notice they did not pay the rent for December 2018, and have failed to pay rent for January 2019.

The landlord seeks an order of possession and a monetary order for unpaid rent.

The landlord further stated that the tenants provided false references and pay stubs and those issues were taken to the police. The landlord stated that they believe the tenants are also scamming others as they were contacted by a person saying the tenants were advertising the premises and they wanted the security deposit and first month's rent paid up front.

### Analysis

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

#### **How to end a tenancy is defined in Part 4 of the Act.**

##### **Landlord's notice: non-payment of rent**

*46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

*(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

...

*(4) Within 5 days after receiving a notice under this section, the tenant may*

*(a) pay the overdue rent, in which case the notice has no effect, or*

*(b) dispute the notice by making an application for dispute resolution.*

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application must be dismissed as the tenants did not pay rent within 5 days after receiving the Notice.

Further, the tenants have not paid any rent to the landlord since they took possession of the rental unit. I find the tenants have breached the Act when they failed to pay rent for December 2018 and January 2019.

Since I have dismissed the tenants' application, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

### **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 find that the landlord is 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 the landlord is entitled to recover unpaid rent for December 2018, and January 2019, in the total amount of **\$5,600.00**.

Therefore, I grant the landlord a monetary order in the amount of **\$5,700.00** comprised of the above amount and the \$100.00 cost of the filing fee. 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 also note for the record, that the tenants may be using false documents to obtain accommodation, such as falsifying paystubs and creating false references. **The tenants are cautioned** that falsifying documents is an offence and administrative penalties under the Act, could apply.

In addition I have noted for the record, that the tenants may be attempting to fraudulently obtain security deposit and rent from other people. **The tenants are cautioned**, if proven, they may be subject to administrative penalties under the Act and other legal action.

### Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession and a monetary order for unpaid rent.

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: January 28, 2019

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Residential Tenancy Branch