



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, CNR, DRI, RP, MNDC, OLC, LRE, RR, MNR, FF

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On August 26, 2019, the Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenants also applied for the following relief:

- for the Landlord to make repairs to the rental unit
- for money owed or compensation for loss
- to dispute a rent increase above the amount allowed by law
- for the Landlord to comply with the Act, Regulation or tenancy agreement
- to suspend or set conditions on the Landlord's right to enter the unit
- to reduce rent for repairs, services or facilities that are not provided
- to be paid back for emergency repairs made during the tenancy

On August 29, 2019, the Landlords applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was set for a conference call hearing. The Landlord appeared at the hearing; however, the Tenants did not. The Landlord provided affirmed testimony that he served the Tenants with the Notice of Dispute Resolution Proceeding to the Tenants using Canada Post registered mail. The Landlord testified that notice of the hearing was sent to the Tenants' address and that the mail was picked up by the Tenants on September 11, 2019. I find that the Tenants were served with notice of the hearing in accordance with sections 89 and 90 of the Act.

The Landlord was provided with an opportunity to ask questions about the hearing process. The Landlord was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants failed to attend the hearing to pursue their application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 20, 2019. The line remained open while the phone system was monitored for fourteen minutes and the Tenants did not call into the hearing during this time. Therefore, as the Tenants did not attend the hearing by 9:44 AM, I dismiss the Tenants' application without leave to reapply.

During the hearing the Landlord asked to amend his application to include a claim to keep the security deposit towards unpaid rent.

### Issue to be Decided

- Is the tenancy ending due to a fundamental breach of the tenancy agreement regarding payment of rent?
- Is the Landlord entitled to an order of possession and a monetary order?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?

### Background and Evidence

The Landlord testified that the tenancy began on April 1, 2019 as a six-month fixed term tenancy to continue thereafter on a month to month basis. Rent in the amount of \$1,175.00 is due to be paid to the Landlords by the first day of each month. The Tenants paid the Landlord a security deposit of \$575.00.

### 10 Day Notice

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 20, 2019 ("the 10 Day Notice"). The 10 Day Notice indicates the Tenants have failed to pay \$785.00 that was due on August

1, 2019. The Landlord had a witness present who provided affirmed testimony that he personally served the 10 Day Notice to the Tenants on August 20, 2019. The Landlord provided a copy of the 10 Day Notice. The Landlord also testified that a copy of the 10 Day Notice was also posted to the Tenants' door.

The 10 Day Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

The Landlord testified that the Tenants did not pay all the rent owing under the tenancy agreement for the month of August 2019 within five days of receiving of the 10 Day Notice.

The Landlord testified that he agreed to reduce the rent owing for August 2019 to be \$960.00. The Landlord testified that the Tenants only paid him \$175.00 for August 2019 rent. The Landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for balance owing of \$785.00.

The Landlord testified that the Tenants did not pay the outstanding amount of rent within five days of receiving the 10 Day Notice.

The Landlord testified that the Tenants did pay the rent of \$960.00 for the months of September and October. The Landlord testified that he accepted these rent payments for use and occupancy only.

The Landlord is requesting an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$785.00.

The Landlord is seeking to keep the security deposit of \$575.00 in partial satisfaction of his claim for unpaid rent.

### Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

The Tenants were served with a Notice of Dispute Resolution Proceeding from the Landlord and failed to attend the hearing.

I find that the tenancy agreement requires the Tenants to pay the Landlords rent in the amount of \$1,175.00 each month. I accept the Landlord's testimony that the rent for August 2019 was reduced to \$960.00.

I accept the Landlords testimony that the Tenants only paid them \$175.00 for August 2019 rent and have not paid the balance of \$785.00 for August within five days of receiving the 10 Day Notice.

I find that the Tenants have fundamentally breached the tenancy agreement that requires rent to be paid by the first day of each month.

Under section 55 of the Act, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective two (2) 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 Tenants owe \$785.00 for August 2019 rent. I allow the Landlords application to be amended to include a claim against the security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$885.00 comprised of \$785.00 in unpaid rent for August 2019 and the \$100.00 fee paid by the Landlords for this hearing.

After setting off the security deposit of \$575.00 against the award of \$885.00, I find that the Tenants owe the Landlords the balance of \$310.00.

I grant the Landlords a monetary order in the amount of \$310.00. This monetary order may be filed in the Provincial Court (Small Claims) 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 failed to pay the rent owing under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Tenants failed to attend the hearing and their application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 20, 2019 is dismissed.

The Landlords are granted an order of possession effective two (2) days after service on the Tenants.

The Landlords are granted a monetary order for unpaid rent and the cost of the filing fee in the amount of \$310.00.

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: October 28, 2019

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Residential Tenancy Branch