



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, FF

### Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 23, 2020; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed 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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

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 tenancy began on November 15, 2017. Rent in the amount of \$2,400.00 was payable on the first of each month. A security deposit of \$1,200.00 was paid by the tenants.

The parties agreed that the tenant received the Notice on July 23, 2020, in person.

The landlord testified that the tenants have not paid any rent for February 2020 to September 2020.

The tenant testified that they have not paid any rent to the landlords for the said months. The tenant stated that the rent was reduced by the landlord commencing October 1, 2019 to the amount of \$2,000.00.

The landlord testified that there was an agreement with the tenant that they would be reduced the rent to \$2,000.00, only if rent is paid on time. This was an incentive to the tenants.

Analysis

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

In this case, both parties have provided a different version of the amount of the monthly rent. The parties agreed that the rent was \$2,400.00 and effective October 1, 2019, it would be reduced to \$2,000.00. The landlord stated that this was a rent incentive if the tenants paid rent on time. The tenant disagreed that this was a rent incentive. Neither party provided me a copy of the agreement to reduce rent.

However, I accept the tenant's version as they read their copy of this agreement, which the landlords did not deny. Therefore, I find the monthly rent due as of October 1, 2019, was the amount of \$2,000.00.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

### **Rules about payment and non-payment of rent**

**26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.*

...

I am satisfied that the tenants were served with the Notice on July 23, 2020, for unpaid rent for February and March 2020. I find the tenants breached the Act, when they failed to pay the rent. The tenants indicated in their application for dispute resolution that they did not pay rent due to Covid. I do not accept that this was the reason for not paying rent, as this prior to any emergency order being issued.

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 tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator. The tenants had no authority under the Act, not pay rent for February and March 2020.

Based on the above, I find the Notice issued on July 23, 2020 for unpaid rent for February and March 2020, valid and remains in full force and effect. I find the tenancy legally ended on August 2, 2020, and the tenants are now overholding the rental unit as occupants. Therefore, I dismiss the tenants' application to cancel the Notice. As the tenants were not successful with their claim, I find they are not entitled to recover the cost of the filing fee.

As the tenant's application is dismissed, I find the landlords are 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 landlords are entitled to an order of possession, pursuant to section 55 of the Act, 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 **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

As the tenancy has legally ended I do not need to consider the repayment schedule plan for affect rent during the state of emergency. This is only necessary if the tenancy was continuing, which it is not.

I am satisfied based on the evidence of both parties that the tenants have not paid rent for eight months, from, February 2020 and all subsequent rent, up to and including September 2020. I find the tenants have breached the Act when they did not pay the rent, and the landlords have suffered a loss. Therefore, I find the landlords are entitled to unpaid rent in the total amount of **\$16,000.00**.

I find that the landlords have established a total monetary claim of **\$16,100.00** 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 **\$1,200.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$14,900.00**. This order may be filed in 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' application is dismissed. The landlords are granted an order of possession. The landlords are granted a monetary order and are authorized to keep the security deposit in partial satisfaction of the claim.

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: September 08, 2020

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Residential Tenancy Branch