



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR  
OPR-DR, OPRM-DR, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by one of the tenants and by an agent of the landlord.

The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlord company had applied by way of the Direct Request process for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application. The landlord's application was referred to this participatory hearing, joined to be heard with the tenant's application.

The landlord named in the tenant's application attended the hearing, represented the landlord company, and gave affirmed testimony. Both tenants named in the landlord's application also attended and each gave affirmed testimony. The tenants also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

The landlord indicated at the commencement of the hearing that the landlord had not received any evidence from the tenants. One of the tenants advised that it was sent to the landlord by registered mail on September 17, 2020 and has provided evidence of that, however the envelope was returned to the sender and had been tampered with; there's tape across the back. Given that the landlord has not received it, and the tenants have not provided a copy showing the address it was sent to, I decline to consider the tenant's evidence. However, the evidence of the tenants that appears on the automated system of the Residential Tenancy Branch consists of a notice to end the tenancy, a tenancy agreement and a Canada Post cash register receipt but does not contain a date.

The tenants agree that they have received the landlord's evidence, which also contains a copy of the notice to end the tenancy and tenancy agreement.

All evidence of the landlord has been reviewed and is considered in this Decision.

### Issues to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on March 1, 2020 and expires on February 28, 2021, and the tenants still reside in the rental unit. Rent in the amount of \$2,300.00 is payable on the 1<sup>st</sup> day of each month, in addition to parking and cable. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,150.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a 3-storey building, and the landlord also resides in the complex. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on September 2, 2020 the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided as evidence for this hearing, and it is dated September 2, 2020 and contains an effective date of vacancy of September 13, 2020 for unpaid rent in the amount of \$9,200.00 that was due on September 1, 2020. Previous notices to end tenancy for unpaid rent were also served in June, July and August. No rent has been paid since the issuance of the last Notice.

The tenants are currently in arrears of rent the sum of \$11,500.00, having not paid any rent for June, July, August, September or October, 2020. There have been no partial payments or any attempts by the tenants to pay rent. The landlord seeks an Order of Possession and a monetary order for the unpaid rent.

The landlord further testified that the tenancy agreement provides for a fee of \$45.00 per month for parking, which the tenants have not paid for the last 5 months, although they have used the parking spot.

Cable is provided by the landlord for a cost of \$105.00 per month, and the tenants are in arrears the sum of \$525.00.

The landlord offered the tenants a payment plan in writing, but received no response from the tenants, nor any plan verbally from the tenants. The landlord's offer of a payment plan has not been provided as evidence for this hearing.

**The first tenant** (OC) testified that in July, 2020 the landlord attempted to take possession of the rental unit without a bailiff. The tenant went out of town and a house-sitter called saying that the landlord walked into the rental unit and attempted to take possession, would be moving furniture out of the rental unit, and that the tenants were not allowed to be there; it was being repossessed. The landlord had said that it had gone on long enough, was unacceptable and everything would be on the curb. The tenant called the Residential Tenancy Branch and was told that was not permitted, and the tenant told the house-sitter to not allow it to happen.

The tenants received a letter from the landlord about a possible abandonment, but the tenant was out of town at the time, and the house-sitter made it clear it was not abandoned.

The other tenant had a conversation with the landlord asking what it would take to hold onto the apartment, and the landlord indicated that at that point, living there was in question. That was during the period that evictions were banned due to COVID-19.

On September 1, 2020 the landlord didn't make any attempt to speak to the tenants about a payment plan, and only after the tenants disputed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenants received a letter from the landlord wanting to discuss a payment plan. All of this suggests to the tenants is that the landlord would have no interest in allowing the tenants to stay during the continued economic hardship the tenants were facing. The tenants have been unemployed and are struggling.

**The second tenant** (NS) testified that during August, 2020 the tenant was trying to deal with unpaid rent. No payment plan was offered, nor any option. The landlord simply made it clear that she was going to remove the tenants as soon as possible, and the tenant didn't know what to do. This could have been avoidable with a payment plan, but the landlord still tried to get the tenants out of the rental unit.

The tenant also asked about having a yard sale or to sell personal items to come up with ways to pay the rent, but the landlord said, "Absolutely not," and was quite mean about it.

**The tenants' witness** testified that within a week of Canada Day, the witness saw a notice to end the tenancy in the mail slot of the rental unit, and the witness called the tenant. About 1:00 p.m. the landlord entered into the apartment with another person, asked who the witness was, and was told that the witness was house-sitting. The landlord said that the witness was not supposed to be there, had no business being there, and that the tenants were being evicted and everything would be moved out that day. The witness also told the landlord that it was not legal to do so due to the eviction ban.

The witness vacated the apartment to avoid any problems and relayed all of the information to the tenants.

#### SUBMISSIONS OF THE LANDLORD:

The person who attended with the landlord at the rental unit was not there to remove the tenants, but was present in case of any altercations.

#### SUBMISSIONS OF THE TENANTS:

All of this took place during financial hardship of the tenants. There has not been a refusal to pay rent, but the ability to pay has been affected. The tenants could have come up with a payment plan long ago to continue the tenancy.

#### Analysis

There is no doubt that COVID-19 has affected the financial obligations of tenants and landlords.

I refer to Residential Tenancy Policy Guideline 52 – **COVID-19: Repayment Plans and Related Measures** - which states that a landlord cannot pursue an eviction for unpaid “affected rent” unless the landlord has given a valid repayment plan. “Affected Rent” means rent that was due between March 18 and August 17, 2020. However, it also states that: “If a tenant fails to pay rent that is not affected rent when it is due (e.g., rent due on September 1, 2020), the landlord may give the tenant a 10 Day Notice to End Tenancy in accordance with section 46 of the RTA.”

In this case, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dated September 2, 2020 and was served on September 2, 2020 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or September 5, 2020. The amount of unpaid rent in that Notice was \$9,200.00 which includes affected rent, but also includes September's rent. The tenants have not paid any rent, and I find that the landlord is entitled to an Order of Possession. Since the effective date of vacancy, changed to

September 15, 2020 pursuant to the *Act*, has already passed, I grant the Order of Possession effective on 2 days notice to the tenants.

The tenants do not dispute the amount of rent that is unpaid throughout the tenancy, and I am satisfied that the tenants owe \$11,500.00 for unpaid rent.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord has not applied for compensation with respect to parking fees or cable fees, and I leave it to the parties to negotiate a settlement with respect to those matters. The landlord is at liberty to make an application for damage or loss if no further settlement can be reached.

The landlord has not applied for an order permitting the landlord to keep the security deposit, and the *Act* is clear that the tenants have 1 year to provide the landlord with a forwarding address, and then the landlord will have 15 days to return it or apply to keep it, unless the tenants agree otherwise in writing.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$11,600.00.

This order is final and binding and may be enforced.

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 26, 2020

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Residential Tenancy Branch