



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing was scheduled to convene at 9:30 a.m. this date by way of conference call concerning applications made by the tenants and by the landlords. The tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities and to recover the filing fee from the landlords for the cost of the application. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants. The landlords' application was made by way of the Direct Request process, which was referred to this participatory hearing, joined to be heard with the tenants' application.

Both landlords attended the hearing, and one gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call. The landlord testified that the tenants were individually served with the landlords' application, notice of this hearing, and evidentiary material (the Hearing Package) by registered mail on September 25, 2020, and the landlords have provided 2 Registered Domestic Customer Receipts as well as a Canada Post cash register receipt containing that date and 2 tracking numbers, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

The landlord also testified that the tenants have not served the landlords with the tenants' Hearing Package.

Given that the tenants have not joined the hearing, I dismiss the tenants' application in its entirety without leave to reapply.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?

Background and Evidence

The landlord testified that this fixed-term tenancy began on August 15, 2018 and reverted to a month-to-month tenancy after August 31, 2019, and the tenants still reside in the rental unit. Rent in the amount of \$2,100.00 is payable on the last day of each month, in advance for the following month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,050.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a townhouse, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the landlords both attended the rental unit on September 13, 2020 and personally handed one of the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a copy has been provided for this hearing. It is dated September 13, 2020 and contains an effective date of vacancy of September 23, 2020 for unpaid rent in the amount of \$3,750.00 that was due on September 18, 2020.

The rental arrears have accumulated to \$4,550.00, including late fees charged of \$25.00 for each of January and February, 2020. Two Direct Request Worksheets have also been provided for this hearing. The first shows that the tenants paid rent for January, 2020 in 2 installments of \$1,800.00 and \$200.00, leaving \$125.00 outstanding, including a \$25.00 late fee. It also shows that the tenants paid rent for February, 2020 in 2 installments of \$500.00 and \$300.00, leaving \$1,325.00 outstanding including the \$25.00 late fee, and no rent was paid for March, 2020. The second worksheet shows that the tenants paid \$1,800.00, leaving \$300.00 outstanding for September, 2020. The landlords have also provided copies of e-transfers showing that the tenants paid September's rent in 2 installments of \$300.00 and \$1,800.00.

The landlords have also provided a spreadsheet for the non-COVID-19 period for January, February, March and September, 2020 showing that the tenants' rent would have been a total of \$8,400.00, plus \$50.00 in late fees, and the tenants paid a total of \$4,600.00 during that period. The tenants' rent for the COVID-19 period from April through August, 2020 was \$10,500.00, and the tenants overpaid by \$100.00.

The tenants currently owe \$3,450.00 to the end of August, 2020, including \$50.00 of late fees, as well as \$1,100.00 for November, 2020 rent, for a total of \$4,550.00.

### Analysis

The *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent in full or dispute the Notice. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the tenancy and must move out of the rental unit within 10 days of service. In this case, the tenants disputed the Notice, but failed to attend the hearing and have not paid the rent in full. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy, and the landlords are entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

I also accept the undisputed testimony of the landlord that the tenants are in arrears of rent the sum of \$4,550.00 to the end of November, 2020, including the \$50.00 of late fees charged by the landlords, which is contained in the tenancy agreement.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

The landlords currently hold a security deposit in the amount of \$1,050.00. The Direct Request process does not allow for an order permitting the landlords to keep the security deposit or pet damage deposit, and therefore the landlords have not applied to keep it. The tenants must provide the landlords with a forwarding address in writing within 1 year from the date the tenancy ends. If the tenants fail to do so, the landlords may keep the security deposit. If the tenants provide a forwarding address in writing within that 1 year period, the landlords will have 15 days to return the security deposit in full to the tenants or apply for dispute resolution claiming against it, unless the parties otherwise agree in writing. If the landlords fail to do so, the landlords must return double the amount.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

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

I hereby grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,650.00.

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: November 06, 2020

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Residential Tenancy Branch