



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNR-MT**

**OPR-DR, FFL, MNDL-S, MNRL-S, MNDCL-S, OPR**

### Introduction

This hearing was scheduled to deal with applications filed by both the tenants and the landlord pursuant to the *Residential Tenancy Act* ("the Act").

The tenants applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55; and
- A request for more time to cancel a Notice to End Tenancy pursuant to section 66.

The landlord applied for:

- An Order of Possession for unpaid Rent pursuant to sections 46 and 55 by direct request;
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72;
- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55.

The tenants did not attend this 40 minute hearing, although I left the teleconference hearing connection open throughout the hearing to enable the tenant to call into this hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the

teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing on her own behalf. The landlord testified she had previously filed earlier Applications for Dispute Resolutions regarding this tenancy and gave conflicting and contradictory evidence regarding whether she served this Application for Dispute Resolution Proceedings Package to the tenants. After searching through her documents, the landlord acknowledged she did not serve the tenants with this Application for Dispute Resolution Proceedings Package. Based on this testimony, I find the tenants were not served with the landlord's Application for Dispute Resolution Proceedings, in contravention of section 89(1) of the Act.

The landlord testified the tenants eventually paid rent for the month of October but did not vacate the rental unit until November 21<sup>st</sup>. The landlord no longer requires an order of possession as the tenants have moved out of the rental unit.

#### Analysis

Based on the landlord's undisputed testimony, I find the tenancy ended on November 21, 2020, pursuant to section 44(1)(d) of the Act. The landlord no longer seeks an order of possession and I dismiss this portion of the landlord's application seeking one. The tenants' application to dispute the notice to end tenancy is likewise dismissed as the tenancy has already ended in accordance with the Act.

The landlord acknowledges she did not serve the tenants with the Application for Dispute Resolution. As the landlord has not served the Application for Dispute Resolution, the remainder of the landlord's application is dismissed with leave to reapply.

#### Conclusion

The tenancy has ended pursuant to section 44(1)(d) of the Act.

The tenant's application to dispute the notice to end tenancy is dismissed without leave to reapply.

The landlord's application for an order of possession is dismissed without leave to reapply.

The remainder of the landlord's application is dismissed with leave to reapply, should the landlord choose to do so.

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 14, 2021

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Residential Tenancy Branch