



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR-PP, OPRM-DR, FFL  
CNR, DRI, LRE, LAT, OLC

### Introduction

This hearing was scheduled to convene at 9:30 a.m. on January 19, 2021 by way of conference call concerning applications made by the landlords and by the tenants.

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 for the cost of the application. The application was made by way of the Direct Request process, which was adjourned to this participatory hearing, joined to be heard with the tenants' application, and the landlords were provided with an Interim Decision.

The tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; disputing a rent increase; an order limiting or setting conditions on the landlords' right to enter the rental unit; an order allowing the tenants to change the locks to the rental unit; and for an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

Both landlords attended the hearing and each 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 tenant joined the call. One of the tenants joined the call at 9:50 a.m. after the first landlord had commenced testifying. The tenant also gave affirmed testimony.

During the course of the hearing, I advised the parties that the Rules of Procedure require that multiple applications contained in a single application must be related, and the primary application with respect to the tenants' application refers to a notice to end the tenancy and unlawful rent increase. No evidence or testimony was lead by either party with respect to the tenants' applications for an order limiting or setting conditions on the landlords' right to enter the rental unit; or for an order allowing the tenants to change the locks to the rental unit; or for an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing, I learned that one of the named tenants (JB or JP) is a 5 year old child. I dismiss any and all claims with respect to the child.

### Issues to be Decided

The issues remaining to be decided are:

- Has the tenant established that rent has been increased contrary to the law?
- 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*, or should it be cancelled?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?

### Background and Evidence

**The first landlord** (SKB) testified that the tenant resided in the rental unit at the time that it was purchased by the landlords on September 18, 2019, and the tenant still resides in the rental unit with her child. Rent in the amount of \$1,100.00 is payable on the 1<sup>st</sup> day of each month. The landlords collected a security deposit from the previous owners on behalf of the tenant in the amount of \$550.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenancy agreement provided for this hearing does not indicate the amount of rent payable, however the landlord testified that the tenant's copy does reflect the amount of \$1,100.00, and several e-transfers for that amount have been provided as evidence for this hearing.

On October 2, 2020 the landlords served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by tacking it to the door of the rental unit. A copy has been provided and it is dated October 2, 2020 and contains an effective date of vacancy of October 15, 2020 for unpaid rent in the amount of \$1,400.00 that was due on October 1, 2020.

The tenant fell into arrears of rent for the months of June, July and August, 2020. The landlords have also provided a copy of a payment plan, which provides the tenant with 11 months to catch up on the rent, when the law requires 10 months.

The tenant paid rent in full for September, 2020, and including the amount of \$300.00 specified in the payment plan, the tenant ought to have paid \$1,400.00 in October, but paid \$1,250.00, leaving \$150.00 outstanding for that month.

In November, 2020 a government Ministry paid \$2,010.00 for back rent, or a portion toward June, July and August rent. In December, 2020 and January, 2021, a government Ministry also paid the landlords \$1,000.00 for each of those months.

The tenant is now in arrears of rent the sum of \$1,790.00, and the landlords have provided a calculation sheet.

The landlords have not increased the rent at all, and the landlord testified that the tenant's claim of an unlawful rent increase refers to the payment plan.

**The second landlord** (FB) testified that the landlords are doing what's required as landlords and are following the rules, but it's been stressful for the landlords.

**The tenant** testified that she has paid enough of the payment plan given to her.

The landlords are impossible to get ahold of, and took about a month for the landlords to reply to the tenant's text message. Instead of asking what the tenant could afford to pay, the landlords gave the tenant a payment plan. The tenant has been paying \$150.00 each month toward that payment plan in addition to the \$1,100.00 per month. The tenant thought she was paying enough. The landlords don't respond to the tenant, but just make demands.

### Analysis

Firstly, the tenant did not provide any testimony or evidence with respect to an unlawful rent increase, and considering the evidence and testimony, I agree with the landlord that the tenant considers the payment plan to be an unlawful rent increase. The regulations during the COVID-19 period provide for a landlord to give a payment plan to a tenant in order for the tenant to catch up on arrears of rent during that affected period. Therefore, I dismiss the tenant's application disputing a rent increase.

The law also states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the Notice. If the tenant

fails to do either within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the Notice was given on October 2, 2020 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or October 5, 2020. The tenant does not dispute that rent was not paid in full, and filed the Application for Dispute Resolution disputing the Notice on October 28, 2020, which is well beyond the 5 days provided in the *Act*. Therefore, I must find that the tenant failed to pay the rent in full or dispute the Notice in accordance with the law, and is conclusively presumed to have accepted the end of the tenancy. The tenant's application to cancel the Notice is dismissed and I grant an Order of Possession in favour of the landlords. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days' notice to the tenant.

I have reviewed the e-transfers and other rent payments made that have been provided as evidence for this hearing. The landlords' calculation sheet shows that the repayment plan, based on arrears of \$3,300.00, divided by 11 months equals \$300.00 per month in addition to the \$1,100.00 monthly rent, for a total of \$1,400.00 per month.

It also shows that in October and November, 2020 the tenant paid \$1,250.00, leaving a balance of \$150.00 outstanding for each of those months for the rent and repayment plan. It also shows the Ministry payment of \$2,010.00, leaving **\$990.00** owing for the repayment plan. (\$3,300.00 - \$150.00 paid towards arrears in October and \$150.00 paid towards arrears in November and \$2,010.00 from the Ministry).

It also shows that rents in the amount of \$1,000.00 were paid for December 2020 and January 2021, leaving \$100.00 outstanding for regular rent and \$300.00 for each of those months for the repayment plan, leaving an additional **\$800.00** outstanding, and \$990.00 + \$800.00 = **\$1,790.00**.

I find that the landlords have established a monetary claim of \$1,790.00 for unpaid rent.

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

Since the tenancy is ending, I dismiss the tenants' application in its entirety without leave to reapply.

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 tenant.

I further grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,890.00**.

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: January 20, 2021

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Residential Tenancy Branch