



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GORDON N GORDON INTERIORS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

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

### **Introduction**

This hearing dealt with applications filed by the tenant and the landlord pursuant to the Residential Tenancy *Act* (the “*Act*”).

The tenant applied for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55.

The landlord applied for:

- An order of possession and a monetary order for unpaid rent, by direct request pursuant to sections 46, 55 and 67;
- An order of possession for unpaid rent by direct request pursuant to sections 46 and 55; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The cross-applicant/tenants did not attend this hearing, although I left the hearing connection open until 11:13 a.m. to enable the tenants to call into this teleconference 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 was represented at the hearing by AB, bookkeeper (“landlord”). The landlord testified she served the tenants with her cross application by registered mail on December 18, 2020. The tracking numbers for the mailings are recorded on the cover page of this decision. The tenants are deemed to be served with the landlord’s Application for Dispute Resolution on December 23, 2020 in accordance with sections 89 and 90 of the *Act*.

### Preliminary Issue

The landlord testified that the tenants moved out of the rental unit yesterday night, on February 3, 2021. As such, I find the tenancy ended on February 3, 2021 when the tenants vacated the rental unit in accordance with section 44(1)(d). The order of possession is no longer a dispute that may be determined under Part 5 of the *Residential Tenancy Act* and pursuant to section 62(4), this portion of the tenant's application is dismissed without leave to reapply. The landlord's application for an order of possession is likewise dismissed without leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

### Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on April 1, 2020 with rent set at \$1,500.00 per month, payable on the first day of each month.

The landlord gave the following undisputed testimony. The tenants paid rent regularly until October, 2020. The tenants were short \$62.50 that month. The tenants have not paid rent for the months of November, December or January. The tenants vacated the rental unit on February 3, 2021. During the hearing, the landlord made an oral application to amend her monetary claim to seek rent for additional months the tenants remained living in the rental unit.

### Analysis

Rule 4 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served. Section 64(3) allows the director to amend an application or permit an application to be amended.

In consideration of the evidence filed and the testimony of the landlord, further to Rule 4, I find the tenant could reasonably have anticipated that the landlord would claim a monetary order for outstanding rent which accrued following the service of the Ten-Day Notice. I accordingly allow the landlord to amend the application as sought.

The tenants did not attend this hearing to provide any evidence to dispute the landlord's testimony or evidence. The tenants did not provide any evidence to indicate they had any right to deduct all or a portion of the rent. Section 26 is clear, 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. Based on the undisputed testimony of the landlord, I find the tenants failed to pay the full rent for October, 2020, leaving arrears in the amount of \$62.50. The tenants also failed to pay rent for November, December or January and vacated the rental unit on February 3, 2021.

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. The landlord is entitled to a monetary order as follows:

Item	Amount
Remainder of October rent	\$62.50
November rent	\$1,500.00
December rent	\$1,500.00
January rent	\$1,500.00
<b>Total</b>	<b>\$4,562.50</b>

The landlord is also entitled to pro-rated rent for the first 3 days of February, calculated as  $(\$1,500.00/28 \text{ days in February} \times 3 \text{ days} = \mathbf{\$160.71})$ . I award the landlord this amount for unpaid February rent. As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$4,823.21**. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 04, 2021

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Residential Tenancy Branch