



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, RP, RR, CNR, MNDCT, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application filed on January 11, 2021 is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent and other money owed;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application filed on November 13, 2020 is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on November 10, 2020, (the "Notice")
2. To have the landlord make repairs;
3. For a rent reduction for repairs not completed;
4. For monetary compensation for loss or other money owed; and
5. To have the landlord comply with the Act.

The tenants' filed a second application filed on December 31, 2020 is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "2 Notice") issued on December 28, 2020;
2. To have the landlord make repairs;
3. For a rent reduction for repairs not completed;
4. For monetary compensation for loss or other money owed; and
5. To have the landlord comply with the Act.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances both parties have indicated several matters of dispute on the Applications for Dispute Resolution, the most urgent is whether the Notice or the 2 Notice should be set aside.

I find that not all the claims on these Applications for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants request to set aside the Notice to End Tenancy and the landlord's application for an order of possession, for a monetary order for unpaid as they are sufficiently related. Should the landlord be successful the retention of the security deposit and pet damage deposit will also be considered to offset the amount owed.

All other issues in their respective application are dismissed with leave to reapply.

#### Issues to be Decided

Should the Notice or 2 Notice be cancelled?

Is the landlord entitled to an order of possession?

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

Is the landlord entitled to keep the security deposit and pet damage deposit?

#### Background and Evidence

The parties entered into a fixed term tenancy agreement which began on June 15, 2020 and was to expire on June 14, 2021. At the end of the fixed term the tenancy was to continue on a month-to-month agreement. The monthly rent was \$2,500.00 and was payable in two installments on 1<sup>st</sup> and 15<sup>th</sup> of each month. The tenants paid a security deposit of \$1,250.00 and a pet damage deposit of \$250.00.

The tenants acknowledge that they received the Notice on November 10, 2020, which shows they owed the amount of \$3,250.00, in unpaid rent. The tenants stated the only rent payments they have made since receiving the Notice was \$1,000.00 in November 2020, and another \$1,000.00 in January 2021. The tenants stated that they are having financial difficulties at the moment.

The landlord stated as of todays date the tenant's owe rent in the amount of \$9,750.00. Filed in evidence is rent ledger, up to the end of December 2020. The landlord seeks and order of possession and a monetary order for unpaid rent.

## Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

### **Rules about payment and non-payment of rent**

**26** *(1) 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.*

...

In this case, I accept the evidence of both parties that the tenants failed to pay rent in accordance with their tenancy agreement. The current rent arrears total the amount of \$9,750.00. I find the tenant's breached the Act and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$9,750.00.**

**How to end a tenancy is defined in Part 4 of the Act.**

### **Landlord's notice: non-payment of rent**

**46** *(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

*(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

...

*(4) Within 5 days after receiving a notice under this section, the tenant may*

*(a) pay the overdue rent, in which case the notice has no effect, or*

*(b) dispute the notice by making an application for dispute resolution.*

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application had no merit as the tenants admitted the outstanding rent in the Notice was not paid within 5 days after receiving the Notice. I find the Notice is valid and remains in full force and effect. I find the tenancy legally ended on November 23, 2020, the date in the Notice and the tenants are overholding the premise. Therefore, I dismiss the tenants' application to cancel the Notice.

As the tenants were not successful with their original application to cancel the Notice, I find it not necessary to consider the merits of the 2 Notice issued.

As the tenants' application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I find that the landlord has established a total monetary claim of **\$9,850.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,250.00** and pet damage deposit of **\$250.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$8,350.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenants' application is dismissed. The landlord's application is granted an order of possession. The landlord is granted a monetary order and may keep the security deposit and pet damage deposit and is granted a formal order for the balance due.

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 5, 2021

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Residential Tenancy Branch