



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, RR, PSF, OLC, MNDT, LRE, RP

### Introduction

On December 18, 2020, the tenants filed an Application for Dispute Resolution:

- To cancel a One Month Notice to End Tenancy for Cause, issued on December 11, 2020;
- For a monetary order for money owed or loss in the amount of \$8,127.37;
- to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided; and
- To have the landlord to comply with the Act, regulation and/or the tenancy agreement.

On December 28, 2020 the tenants filed an Application for Dispute Resolution :

- To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on December 21, 2020;
- to have the landlord provided provide services or facilities required by the tenancy agreement or law;
- to have the landlord make repairs to the unit;
- to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided;
- For a monetary order for money owed or loss in the amount of \$7,700.00; and
- To be allowed to change the locks to the rental unit.

On January 12, 2021 the tenants filed an Application for Dispute Resolution:

- To suspend or set conditions on the landlord's right to enter the rental unit;
- To be allowed to change the locks to the rental unit; and
- To have the landlord to comply with the Act, regulation and/or the tenancy agreement

On February 16, 2021 the tenants filed an Application for Dispute Resolution:

- cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on February 15, 2021;
- For a monetary order for money owed or loss in the amount of \$35,000.00; and
- To be allowed to change the locks to the rental unit.

Both parties appeared, gave 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 the tenants have filed multiple application for dispute resolution with multiple unrelated disputes.

I find that not all the claims in these Application for Dispute Resolutions are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants' request to set aside the notices to end tenancy. The balance of the tenants' applications are dismissed, with leave to re-apply.

As there are multiple notices to end the tenancy, I will commence this hearing with the most recent 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on February 15, 2021. Should that notice not be proven, I will consider the next 10 day notice to end tenancy and then the One Month Notice to End Tenancy for Cause.

#### Issue to be Decided

Should the tenancy continue?

#### Background and Evidence

The tenancy agreement shows that the tenancy began on September 15, 2020. Rent in the amount of \$2,200.00 was payable on the first of each month. A security deposit of \$1,100.00 was paid by the tenants.

The tenant testified that they received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 15, 2021.

The female tenant testified that they “**absolutely did not pay the outstanding rent**” indicated in the notice to end tenancy and that they have not paid any rent for January, February, and March 2021.

The female tenant testified that they are not paying rent because the landlord has breached the Act, by not making the rental unit legal, by harassing them and not making repairs.

The female tenant testified that they told the landlord they would pay the outstanding rent and utilities when they have complied with the Act.

The landlord confirmed rent has not been paid for three months.

### 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.***

...

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, an illegal rent increase or for the cost of making an emergency repair.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application must be dismissed as the tenants admitted rent was not paid within 5 days after receiving the Notice and have not paid subsequent rent because they believed the landlord has breached the Act.

However, the tenants did not have the authority under the Act to deduct any portion from the rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so, even if they believe the landlord has breached the Act.

In this matter the only reasons for non-payment of rent are allegations of the landlord breaching the Act. I find the tenants do not have any authority under the Act, to withhold the rent. I find the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on February 15, 2021, is valid and remains in full force and effect. Therefore, I dismiss the tenants' application to cancel the notice to end tenancy without leave to reapply.

As the tenants were not successful with their application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on February 15, 2021, I find it not necessary to consider either of the other notices to end tenancy.

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 landlords are 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 note for the record, that the female tenant was argumentative because I would not consider at this hearing the issue of the landlord breaching the Act. This issue was not required to be heard, because under section 26 of the Act, the tenant must pay the rent, **whether or not the landlord complies with this Act.** By the tenants' own admission, they have "absolutely not paid rent" for three months.

The tenants were granted leave to reapply for any monetary compensation they believe they are entitled to under the Act. and that application must not exceed the maximum amount of \$35,000.00 or they must make that application in the Supreme Court.

## Conclusion

The tenants' application to cancel the notice to end tenancy is dismissed. The landlords are granted an order of possession.

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: March 18, 2021

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Residential Tenancy Branch