



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, FF

### Introduction

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

The landlords' application is seeking orders as follows:

1. For an order of possession based on unpaid rent;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on January 2, 2021; and
2. To have the landlord comply with the Act.

### Tenants' application

This matter was set for hearing by telephone conference call at 11:00 A.M on this date. The line remained open while the phone system was monitored for twenty minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenants did not attend the hearing by 11:20 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenants' application without leave to reapply.

### Landlords' application

Although the landlord is entitled to obtain an order of possession under the tenants' application pursuant to section 55 of the Act, if they have met the statutory requirements; however, as the landlords' have filed for monetary compensation for the unpaid rent, I must determine if the tenants were served with the landlords' Application for Dispute Resolution.

The landlord testified that they served their Application for Dispute Resolution on the tenants in person on January 12, 2021. I find the tenants were served in accordance with section 89 of the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice be cancelled?

Are the landlords entitled to an order of possession?

### Background and Evidence

The landlord testified that they served the tenants with the Notice, in person, on January 2, 2021. Filed in evidence is a copy of the Notice.

The landlord testified that the tenants failed to pay rent for January 2021 and has failed to pay all subsequent owed. The landlord seeks to recover unpaid rent for January, February, and March 2021 in the total amount of \$5,400.00.

The tenants in their application confirmed that they received the Notice on January 2, 2021. The tenants write in their application the reason they are disputing the Notice is because:

“the landlord is claiming that we are not a good fit and that the tenants downstairs say we make too much noise and other reasons listed on the 10 day end of tenancy form”

[Reproduced as written.]

### 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.

In this case, the tenants did not appear to prove that they had the right under the Act to withhold any amount from their rent. Further, the tenants written submission is not relevant to the issue of unpaid rent and is not grounds to withhold the rent.

I accept the undisputed evidence of the landlord that the tenants did not pay the outstanding rent owed for January 2021, within five days of receiving the Notice. I find the tenants breached section 26 of the Act when they failed to pay the rent.

I find the Notice issued on January 2, 2021 to be valid and remains in full force and effect. I find the tenancy legally ended on January 12, 2021 which is the effective date of the Notice, and the tenants are overholding the premise. Therefore, I dismiss the tenants' application to cancel the Notice.

As the tenant's 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 tenant. 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 am satisfied based on the evidence of the landlord that the tenants have not paid rent for January, February, and March 2021. I find the tenants have breached section 26 of the Act and the landlords have suffered a loss. Therefore, I find the landlords are entitled to a monetary order for unpaid rent in the total amount of **\$5,400.00**.

I find the landlords have established a total monetary claim of **\$5,500.00** comprised of the above amount and the \$100.00 cost of filing their application. This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants' application is dismissed. The landlords are granted an order of possession and a monetary order for unpaid rent.

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: April 01, 2021

---

Residential Tenancy Branch