



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing convened as a result of cross applications. In the Tenants' Application filed on January 27, 2021, the Tenants sought an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 25, 2021 (the "Notice"). In the Landlord's Application for Dispute Resolution the Landlord sought an Order of Possession and monetary compensation from the Tenants based on the Notice and to recover the filing fee.

The hearing of the parties' Applications was scheduled for 11:00 a.m. on April 23, 2021. Only the Landlord's representative, A.C., called into the teleconference hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 11:11 a.m. Additionally, 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.

As the Tenants did not call in, I considered service of the Landlord's hearing package. A.C. testified that they served the Tenants with the Notice of Hearing and the Application on March 11, 2021 by registered mail. A copy of the registered mail tracking number for the packages sent to each of the Tenants is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of March 16, 2021 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

At the outset of the hearing, the Landlord testified that the Tenants vacated the rental unit on March 14, 2021, since filing this application. As a result, the Landlord requests request for an Order of Possession was no longer required.

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rules 7.1, 7.3 and 7.4 address the requirement of a party to call into the teleconference hearing and read as follows:

#### **7.1 Commencement of Hearing**

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As the Tenants did not call into the hearing, and the Landlord appeared and was ready to proceed, **I dismiss the Tenants' claim without leave to reapply.**

#### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord recover the filing fee?

#### Background and Evidence

A month to month tenancy agreement between the parties began on or about January 15, 2021 and ended on March 14, 2021 when the Tenants vacated the rental unit. The Tenants were obligated to pay monthly rent of \$3,100.00. The Landlords representative confirmed the Tenants failed to pay rent during their tenancy such that the sum of \$7,750.00 remained outstanding for the following:

Unpaid rent for January 15-31, 2021	\$1,550.00
Unpaid rent for February 2021	\$3,100.00
Unpaid rent for March 2021	\$3,100.00
<b>TOTAL</b>	<b>\$7,750.00</b>

The Notice was served on the Tenants by posting to the rental unit door. Although the Tenants applied to dispute the Notice they failed to call into the hearing and vacated the rental unit prior to the hearing date.

#### Analysis

Based on the documentary evidence, the undisputed testimony of the Landlord's representative, and on the balance of probabilities, I find the following.

Pursuant to section 26 of the *Act*, a Tenant must pay rent when it is due in accordance with the tenancy agreement. I find the Tenants were obligated to pay rent in the amount of \$3,100.00 per month. I find the Tenants breached section 26 of the *Act* and the

residential tenancy agreement by failing to pay \$7,750.00 in rent as claimed by the Landlord. I therefore find the Landlord is entitled to recovery of this amount.

As the Landlord's application had merit, I also grant the Landlord the recovery of the \$100.00 filing fee for a total monetary claim of **\$7,850.00** comprised of the following:

Unpaid rent for January 15-31, 2021	\$1,550.00
Unpaid rent for February 2021	\$3,100.00
Unpaid rent for March 2021	\$3,100.00
Filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$7,850.00</b>

In this case the Tenants failed to pay a security deposit. I therefore grant the Landlord a monetary Order pursuant to section 67 of the *Act* for the full amount owing by the Tenants in the amount of **\$7,850.00**. This Order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that court.

### Conclusion

The Tenants failed to call into the hearing; as such their Application is dismissed without leave to reapply.

The Tenants vacated the rental unit such that the Landlord's application for an Order of Possession was no longer required; this claim is therefore dismissed without leave to reapply.

The Landlord is entitled to monetary compensation in the amount of **\$7,850.00** for unpaid rent and recovery of the filing fee. The Landlord is granted a Monetary Order under section 67 for the balance due in the amount of **\$7,850.00**. This Order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) 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: April 26, 2021

---

Residential Tenancy Branch