



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNCT, RR, RP, FFT  
OPR, MNR, FFL

### Introduction

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

The landlord's application is seeking orders as follows:

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

The tenant's 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 April 14, 2021;
2. To have the landlord make repairs to the rental unit;
3. For compensation for monetary loss or other money owed;
4. For a rent reduction; and
5. To recover the cost of filing the application.

The tenant amended their application on August 4, 2021 and August 6, 2021 to increase their monetary claim to \$54,000.00

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. Both parties confirmed under affirmation that they were not recording this hearing in compliance with Rule 6.11.

### Preliminary and Procedural issues

In this case the tenant is seeking a monetary claim in the amount of \$54,000.00. I find that is outside my statutory limit of \$35,000.00. Therefore, I decline to hear the tenant's claim for monetary compensation due to lack of jurisdiction.

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 tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the landlord's application for an order of possession and the landlord's unpaid rent.

### Issues to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

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

### Background and Evidence

The tenancy began on October 1, 2020. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenant.

The tenant testified that they received the Notice on April 14, 2021. The tenant stated they did not pay the rent because they believe the landlord has breach the Act by not fixing the washer and loss of quiet enjoyment.

The tenant testified that they did not pay any rent for April, May 2021. The tenant stated they paid \$1,100.00 for June 2021, and no rent for July and August 2021.

The landlord testified that the tenant has failed to pay rent, and currently owes the amount of \$4,900.00, plus \$125.00 in late fees.

The tenant does not dispute the amount owed.

## 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 tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant 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 tenant's application must be dismissed as the tenant admitted rent was not paid within 5 days after receiving the Notice because they believed the landlord has breached the Act by not repairing the washing machine and loss of quiet enjoyment.

However, these are not valid reasons under the Act to withhold the rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. I find the Notice is valid and remains in full force and effect. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant was not successful with their application the tenant is not entitled to recover the filing fee from the landlord.

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.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

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 **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find that the landlord is entitled to a monetary order, pursuant to section 55(1.1) and 67 of the Act in the total amount of **\$5,125.00**, comprised of unpaid rent of \$4,900.00, late fees of \$125.00 and the cost to recover the filing fee of \$100.00.

I order that the landlord retain the security deposit of **\$600.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$4,525.00**. 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 tenant's application is dismissed. The landlord is granted an order of possession and a monetary order. The landlord is authorized to keep the security deposit to offset the amount owed.

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: August 24, 2021

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Residential Tenancy Branch