



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNL, OPR, MNR, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenants filed under the Residential Tenancy Act.

The landlord's 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 May 15, 2021;
2. To cancel a Two Month Notice for Landlord's Use of Property, (the "2 Month Notice"), issued on April 15, 2021;
3. To suspend or set conditions on the landlord's right to enter the rental unit; and
4. To recover the cost of filing the application.

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.

### Preliminary and Procedural matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure (the "Rules") authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute in the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice and the Two Month Notice. I find that not all the claims on this Application are sufficiently related to be determined during these proceedings. I will, therefore, only

consider the tenant's request to set aside the Notice and the Two Month Notice and the landlord's related application for an order of possession and a monetary order for the unpaid rent., plus the filing fees. The balance of the tenant's application is dismissed, with leave to re-apply.

At the outset of the hearing legal counsel for the tenant stated that the tenants were served with additional evidence just prior to the hearing and is not within the time period permitted by the Rules. Counsel submits that this matter should be adjourned so they can properly review the new evidence and be able to assess the credibility of the landlord's witnesses.

The landlord's legal counsel does not agree to this matter being adjourned. Counsel for the landlord stated that they sent the evidence to the tenants on September 5, 2021 by registered mail. Counsel submits that the evidence that was served late is not related to the Notice or the 2 Month Notice as it relates to the issue to why the tenant want to suspend or set condition on the landlord's right to enter the rental unit. Counsel for the landlord does not object to this evidence be excluded or to have the witness excluded from the hearing.

I do not find an adjournment would be appropriate in this matter as the evidence is related to an issue that I will not be considering at today's proceeding pursuant to the Rule outlined above. Further, I find it would be unfair and prejudicial on the tenant's as it would not have been deemed served until September 10, 2021, which is three days before the hearing. Therefore, I find it appropriate to exclude the evidence filed on September 3, 2021. The landlord's witnesses were also excluded from the hearing.

All other evidence was confirmed received by the respective parties.

### Issues to be Decided

Should the Notice or the Two Month 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 December 2020. Rent in the amount of \$4,500.00 was payable on the first of each month. No security deposit was paid by the tenant.

Counsel for the tenant submits that in October 2020 the landlord ask the tenant to assist in the selling, maintaining, and communicating with the occupants of a different property that the landlord owns, and in exchange they would be able to live rent free for two years in the rental unit.

Counsel for the tenant submits that the tenant provided the landlord with six post dated cheques for rent for February 2021 to July 2021; however, due to this agreement the tenant had placed a stop payment on the rent cheques for May 2021, and subsequent rent.

Counsel for the tenant submits that the tenant has provided evidence of communicating with the landlord's real estate agent, and the occupants of the other property to which the landlord owns, which is clearly shows the tenant was acting in a greater capacity. This is supported by the tenant's evidence page 1 - 23, and 38.

Counsel for the tenant submits there is no written contract, and the value of the tenant's services was never discussed; however, as it is based on two years rent free and agreed the value would be \$108,00.00.

The landlord's counsel submits that the landlord never had any discussion with the tenant about living rent free. Counsel for the landlord stated that the tenant did refer the landlord to the real estate agent; however, it was the real estate agent that offered the tenant a "thank you" fee out of their commission, which the landlord is unaware of what that amount was. This is supported by the tenant's evidence on page 2.

The landlord's counsel submits that the tenant is not a real estate agent and is not licensed and it would be unreasonable for the tenant to believe they would be entitled to any commission due to the sale of the landlord's property.

The landlord's counsel submits that the tenant was also selling their own property at the time and believe the communications they have provided in evidence is related to their own sale.

The landlord's counsel submits that the tenant was given free rent for December 2020 and January 2021; however, the tenant paid for rent for February, March, and April 2021 and then stopped payments on the other post-dated cheques. This is why the tenant was served with the Notice. Counsel submits the tenant did not pay the outstanding rent and has not paid any subsequent rent.

The tenant responded that although they were offered a “thank you” fee from the landlord’s real estate agent they did not accept the money because of the deal with the landlord that they would be compensated to live rent free.

### Analysis

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

In this case, I accept there is evidence that the tenant may have been communicating with the landlord’s real estate agent, occupants, and may have been assisting with repairs, and may have even presented a potential buyer for the property to the real estate agent..

However, I am not satisfied that there was any agreement with the landlord that the tenant would be compensated the equivalent amount of \$108,000.00, which would be repaid in the form of free rent for a period of two years. I note the tenant was offered a “thank you” fee by the real estate agent only for referring the landlord to them as a client which was a separate agreement unrelated to the tenancy.

I do not accept that the tenant’s services would equal the amount of \$108,000.00. This is almost 5% of the total value of the sale of the property. I find it highly unlikely that the landlord would hire a real estate agent and pay their commission and on top of that would agree to pay the tenant \$108,000.00 for simply communicating with the real estate agent and the other occupant. This does not have the ring of truth.

I have reviewed all the text messages filed by the tenant in evidence and there is no evidence of any such agreement. I would expect at the very least to see some form of written communication that there was an agreement for the tenants to live rent free in lieu of receiving such a large amount of \$108,000.00. I find the tenant has failed to prove that there was any such agreement and that they were entitled to live rent free for two years.

This is also not consistent with the evidence because if there was such an agreement to live rent free why would the tenant issue the landlord six postdated cheques if they were to truly be living rent free. The tenant placed a stop payment on the rent payable for May 2021 and has not paid any subsequent rent.

I find the tenant failed to pay rent for May 2021 as required by section 26 of the Act. I find the Notice issued on May 15, 2021, complies with section 52 of the Act, is valid and remains in full force and effect. I find the tenancy legally ended on the effective vacancy date in the Notice, which was May 24, 2021. Therefore, I dismiss the tenant's application to cancel the Notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two (2) 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.

As the tenant has not paid any rent for May, June, July, August, and September 2021, I find the landlord is entitled to a monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act, in the total amount of **\$22,500.00**.

**I find the landlord has established a total monetary claim of \$22,600.00 comprised of the above unpaid rent and the \$100.00 to recover the cost of the filing fee.** This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

As I have ended the tenancy based on unpaid rent, I find I do not need to consider the merits of the Two Month Notice because a tenancy cannot end for two different reasons under the Act.

### Conclusion

The tenant's application is dismissed without leave to reapply. The landlord is granted an order of possession and a monetary order for the unpaid rent and the filing fee.

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: September 15, 2021

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Residential Tenancy Branch