



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

for the landlord: MNR-DR, OPR-DR, FFL  
for the tenant: CNR, PSF, OLC, LRE

### Introduction

On May 18, 2021 the landlord applied for an order of possession of the rental unit, and a monetary order for rent not paid. Additionally, they applied for reimbursement of the application filing fee.

The landlord's Application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there is a cross-application by the tenant in place.

On June 3, 2021 the tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities issued by the landlord (the "10-Day Notice"). They also applied for: services/facilities required by the agreement/law; the landlord's compliance with the legislation/tenancy agreement; and, suspended or set conditions on the landlord's right to enter the rental unit.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on September 27, 2021. The landlord attended the telephone conference call hearing; the tenant did not attend.

### Preliminary Matter

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with the notice of this hearing. This means the landlord must provide proof that the document was served in a verified manner allowed under s. 89 of the *Act* and I must

accept that evidence. The landlord provided proof in the form of a document showing details, Proof of Service Notice of Hearing. This sets out that the landlord served the information to one of the tenants in person, on June 10, 2021. This was at the rental unit which the tenants then still occupied. A witness provided a statement and signed to state they observed this service.

The landlord stated in the hearing that they did not receive any information about the tenants' Application. That Application is crossed with that of the landlord here, concerning the same matter.

The tenant did not attend the hearing, although I left the teleconference hearing connection open until 9:42am to enable them to call in to this teleconference hearing scheduled for 9:30am. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when the tenants applied. I also confirmed throughout the duration of the call that the tenants were not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the tenants' application for cancellation of the 10-Day Notice and the other grounds they indicated. The tenants do not have leave to reapply on these issues.

#### Issue(s) to be Decided

Is the landlord entitled to issue an Order of Possession pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 55(1.1) of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

#### Background and Evidence

The landlord spoke to the terms of the tenancy agreement, pages of which they provided as evidence. The tenancy began on December 1, 2020. The rent amount was \$1,100 per month. The tenants were not in attendance at this hearing to provide any information contrary to that presented by the landlord on these discrete points.

In the hearing, the landlord provided that the tenants moved out in July 2021, approximately July 15<sup>th</sup>.

The landlord issued the 10-Day Notice on May 11, 2021, for the move-out date of May 22, 2021. This was for the amount of \$1,100 that the tenants had not paid for May 1, 2021. On their worksheet prepared for this hearing, the landlord claims \$100 as the amount owing from this May rent. This was because the tenants objected to the landlord disconnecting the internet service, withholding \$100 in rent for what they felt was fair recompense for this inconvenience.

In the hearing, the landlord stated a complaint from the tenants followed in June. The tenants paid the amount owing for May; however, the tenants again withheld \$100 in June. This is the amount the landlord claims for recompense here.

### Analysis

From the evidence and testimony of the landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the arrangement between the parties for utilities. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

Given that the tenancy has ended, the validity of the 10-Day Notice is not at issue. I dismiss this issue from the tenant's Application. Reciprocally, I also dismiss the landlord's Application for an Order of Possession.

The landlord was not clear on whether the tenants paid the remaining amount outstanding for May. By the landlord's testimony, the tenants again withheld a \$100 amount from the June 2021 rent. Given the landlord did not present this clearly, I cannot find there was a loss to the landlord in this regard. There is no compensation to the landlord for the rent amount they claim is owing.

Because the tenancy had ended and the landlord did not withdraw their claim in advance of this hearing, I find they are not entitled to recovery of the \$100 Application filing fee.

Conclusion

In the absence of the tenants, I dismiss their Application in its entirety and without leave to re-apply.

The tenancy previously ended; therefore, I dismiss the landlord's Application for an Order of Possession. The landlord's claim for rent not paid, and the Application filing fee, is also dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 27, 2021

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Residential Tenancy Branch