



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MNR-DR, OPR-DR, FFL  
                              Tenants: CNR, FFT

### Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord and the tenants' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed receipt of the other's application for dispute resolution and evidence. I find that the parties were each sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the above documents.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email address for service of this decision and order.

Both parties agree that the tenants moved out of the subject rental property on November 30, 2021.

Residential Tenancy Branch Policy Guideline #3 states:

If the tenant has vacated or abandoned the rental unit prior to the date of the dispute resolution hearing, the date the tenancy ended is the date that the tenant vacated or abandoned the rental unit.

Based on the above I find that the tenancy ended on November 30, 2021. As this tenancy has ended, I find that the tenants' application for dispute resolution is no longer necessary as the issues have been resolved. The tenants' application for dispute resolution is therefore dismissed without leave to reapply. Similarly, I dismiss the landlord's application for an Order of Possession, without leave to reapply.

#### Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord's original application claimed unpaid rent in the amount of \$2,250.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenants has increased to \$9,000.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenants. Therefore,

pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$9,000.00.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the agent's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 23, 2021 and ended on November 30, 2021. Monthly rent in the amount of \$2,250.00 is payable on the first day of each month. A security deposit of \$1,125.00 and a pet damage deposit of \$1,125.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that from August to November 2021 the tenants attempted to pay their rent by each e-transferring their portion of rent to the landlord, meaning that the landlord received three different e-transfers per month. Both parties agree that the landlord refused to accept the multiple e-transfers and asked that the tenants pay in one lump sum on the first day of each month. Both parties agree that the tenants refused to pay in one lump sum and the landlord refused to accept multiple payments from each of the three tenants. Both parties testified that this continued from August to November 2021 which resulted in the landlord not depositing any rent from the tenants for this duration.

Both parties agree that the tenants sent the landlord a further three e-transfers between December 6-8, 2021 totalling \$6,650.00. The landlord testified that he has not accepted the recent transfers and that they are now expired. The landlord testified that he would

accept one payment for the entire amount outstanding. A mutually agreeable payment schedule could not be reached in this hearing.

Both parties agree that the tenants owe the landlord \$9,000.00 in unpaid rent from August to November 2021.

### Analysis

Pursuant to the tenancy agreement, section 26(1) and section 67 of the *Act* and the agreed upon debt of \$9,000.00 in unpaid rent, I find that the tenants owe the landlord \$9,000.00 in unpaid rent.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

### Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
August to November unpaid rent	\$9,000.00
Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$9,100.00</b>

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: December 10, 2021

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Residential Tenancy Branch