



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with cross-applications filed by the parties. On August 26, 2021, the Tenants made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

On August 27, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent and Utilities based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Neither Tenant attended the hearing at any point during the 16-minute teleconference. The Landlord attended the hearing, with K.D. attending the hearing as an agent for the Landlord. The parties were informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

As the Tenants did not attend the hearing, I find that their Application for Dispute Resolution has been abandoned. As such, I dismiss their Application without leave to reapply.

K.D. advised that each Tenant was served a separate Notice of Hearing and evidence package by registered mail on September 16, 2021 (the registered mail tracking numbers are noted on the first page of this Decision). Based on this undisputed testimony, I am satisfied that the Notice of Hearing and evidence packages have been deemed received by the Tenants five days after they were mailed. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

K.D. advised that the tenancy started on July 1, 2021 for a fixed term tenancy of one year; however, the Tenants gave up vacant possession of the rental unit on or around October 15, 2021. Rent was established at an amount of \$2,500.00 per month and it was due on the first day of each month. A security deposit of \$1,250.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She stated that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenants on August 21, 2021, by hand. The Notice indicated that \$2,500.00 was owing on August 1, 2021. The effective end date of the tenancy was noted on the Notice as August 31, 2021.

She testified that the Tenants informed the Landlord, two weeks before August 2021 rent was due, that it would be late. She stated that the Landlord waited a few weeks for rent to be paid for August 2021; however, the Tenants did not pay so the Notice was served. She confirmed that the Tenants did not have any authorization to withhold the rent and she stated that the Tenants did not pay any rent for September or October 2021 either. Therefore, the Landlord is seeking a Monetary Order in the amount of **\$7,500.00** for the rental arrears.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent. Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenants were served the Notice on August 21, 2021. According to Section 46(4) of the *Act*, the Tenants then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act*

states that *“If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the Notice was served on August 21, 2021, the Tenants must have paid the rent in full or disputed the Notice by August 26, 2021 at the latest. The undisputed evidence is that the Tenants did not pay the rent in full by August 26, 2021 to cancel the Notice. While the Tenants disputed the Notice on time, the Tenants' Application was dismissed without leave to reapply. As there is no evidence before me that the Tenants had a valid reason under the *Act* for withholding the rent, I am satisfied that they breached the *Act* and jeopardized their tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. However, as the Tenants have already given up vacant possession of the rental unit, it is not necessary to issue an Order of Possession.

In addition, I am satisfied that the Landlord is entitled to a monetary award for the rental arrears for August, September, and October 2021. As such, I grant the Landlord a monetary award in the amount of **\$7,500.00**.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenants to the Landlord**

Item	Amount
Rental arrears for August 2021	\$2,500.00
Rental arrears for September 2021	\$2,500.00
Rental arrears for October 2021	\$2,500.00

Filing Fee	\$100.00
Security deposit	-\$1,250.00
<b>Total Monetary Award</b>	<b>\$6,350.00</b>

### Conclusion

The Tenants' Application for Dispute Resolution is dismissed without leave to reapply.

Based on the above, the Landlord is provided with a Monetary Order in the amount of **\$6,350.00** 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: January 6, 2022

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Residential Tenancy Branch