



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: CNR  
Landlord: OPR-DR, MNR-DR, FFL

### **Introduction**

This hearing was convened in response to cross-applications pursuant to the *Residential Tenancy Act* (the “**Act**”).

The tenant requested:

- cancellation of the 10-Day Notice to End Tenancy.

The landlord by way of Direct Request applied for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1500 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Since the tenants’ participatory hearing predated the Direct Request Application and dealt with the same issue, the Applications were heard together as cross applications.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the *Act*.

At the outset, I advised the parties of rule 6.11 of the Rules of Procedure (the “**Rules**”), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing. I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

### **Preliminary Issue #1: Tenancy Ended**

The tenants advised and the landlord confirmed that the tenancy ended effective December 31, 2021. As the tenancy has ended, the tenants' application to cancel the 10-Day Notice is no longer valid. Accordingly, I order the tenants' application dismissed, without leave to reapply.

### **Preliminary Issue #2: Amending the Landlord's Application re: Removal of OPR**

The landlord requests an amendment of her application to reflect the current tenancy status. The landlord no longer requires an Order of Possession. The tenant concurred with the request.

The Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. On this basis, I have accepted the landlord's request to amend her original application to reflect the change in tenancy status. The Application for an Order of Possession is removed.

### **Preliminary Issue #3: 10-Day Notice to End Tenancy and a One-Month Notice**

Included with the landlord's application were two additional Notices, a One-Month Notice issued on November 22, 2021, and a 10-Day Notice issued December 2, 2021.

The landlord did not amend her Application to include the One-Month Notice; therefore, the One-Month Notice is excluded from this Arbitration.

Section 88 of the *Act* provides the accepted ways to give or serve documents. The 10-Day Notice issued December 2, 2021, was left on the steps to the basement suite, unaffixed. Documents left on basement steps unaffixed is not an accepted service method under s. 88; the 10-Day Notice issued December 2, 2021, does not comply with the provisions of Section 88 and, therefore, I find that the tenant was not served with the December 2, 2021, 10-Day Notice.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$1500.00;
- 2) recover the filing fee.

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written month to month tenancy agreement starting September 1, 2021. Monthly rent is \$1000.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$500.00. The landlord still retains this deposit.

Although the written tenancy agreement was signed and dated in September 2021, the tenants moved into the basement suite in July 2021. From the outset, the tenancy was a temporary measure until the family found permanent accommodation.

When the tenants took occupancy, the landlord and tenant did a walkthrough of the suite but no paperwork documenting the condition of the suite was signed. A final inspection was completed on January 3, 2022.

The tenants occupied the basement suite. The suite has two (2) bedrooms, a bathroom, a kitchen with a fridge but no stove. There is a locked door separating the landlord's living accommodations from the tenants' accommodations.

The tenant stated in November 2021, an e-transfer for half of the rent, \$500.00, did not go through. At the time, she was unaware that the e-transfer failed. When the landlord issued the 10-Day Notice, the tenant learned that there was a problem with her bank account and debit card, that required her to attend the bank in person. The bank is 30 miles away and the tenant does not have a car and is pregnant, so could not hitchhike. The tenant asked the landlord for a few days to resolve the problem and pay the rent because the money was in the bank but could not be accessed. The landlord agreed to wait a few days for the remaining rent.

Unable to get to the bank, the tenant asked Income Assistance for a Crisis Shelter Supplement. The request was approved by Income Assistance on November 12, 2021. The tenant referenced the letter from the Ministry as a part of her evidence. The tenant stated that initially the landlord agreed to accept the cheque from the Ministry but when it was sent to the landlord, she refused the cheque and sent it back to the Ministry.

The landlord then issued a One-Month Notice on November 22, 2021. Subsequently, the landlord had the (male) tenant forceably removed from the property by police. The landlord/tenant relationship had deteriorated making the living arrangements untenable, so the tenants accepted the One-Month Notice and agreed to move out December 31, 2021.

The tenant explained that because the landlord refused the \$500 rent cheque, Income Assistance would not issue the December 1, 2021, rent because technically, from the Ministry's point of view, they were "homeless".

The tenant testified that in December, she texted the landlord and asked the landlord to extend her a few extra days beyond December 31, 2021. She was 30 weeks pregnant, had to pack up herself, and had truck issues. The tenant stated the landlord agreed to the extension and she can upload the texts as proof of the agreement. She moved out of the rental unit on January 4, 2022.

The landlord confirmed that the tenants moved into the basement suite in July 2021. She stated that she offered the basement suite as a stopgap measure for the family to make sure they were not homeless.

The landlord stated that issues with rent and securing the damage deposit began immediately, resulting in her issuing multiple Notices. The landlord submitted into evidence proof of late payments for August, October, and November. Additionally, the landlord stated that she felt unsafe in her own home based on interactions with the male tenant, that ultimately resulted in the police removing him from the property and a restraining order issued.

The landlord confirmed that she refused the \$500 cheque from Income Assistance because they required her to rescind the eviction notice and she would then have to issue a new Notice. She contacted the Residential Tenancy Board who told her to issue a "use and occupancy" receipt but the Ministry's position was the 10-Day Notice must be withdrawn if the landlord accepted the funds.

The landlord stated that the tenant stayed in the basement suite until January 4, 2022, and that she would have to go back through her notes to confirm she agreed to the extension. The landlord is requesting \$1500.00 in outstanding rent and an additional \$1000.00 "if January counts".

The landlord states that there is damage to the ceiling, "punch marks and holes" and she will file a separate application to claim damages. The tenants state that they moved some of the ceiling panels to different locations to improve soundproofing but there was no significant damage beyond normal wear and tear.

### **Analysis**

Based on a review of the documentary evidence and testimony before me for consideration, I am satisfied that a tenancy under the *Act* exists between the parties and that rent in the amount of \$1000.00 is due on the first day of each month as per the tenancy agreement. I am also satisfied that the landlord still holds the tenant's \$500.00 security deposit in trust.

The landlord's cross application was initiated based on a November 2, 2021, 10-Day Notice. The Notice was delivered to the tenants in person. Pursuant to s. 90 of the *Act*, I find that the tenants were served with the 10 -Day Notice on November 2, 2021.

Based on the aforementioned, this decision is limited to the 10-Day Notice issued November 2, 2021.

Section 26(1) of the *Act*, in part, states as follows

**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.

In reviewing whether the landlord's 10-Day Notice was both warranted and justified under law, I reviewed the evidence provided by way of testimony and in the documents the parties asked me to consider.

I find the rent amount was \$1000.00 from the start date on the tenancy agreement, September 1, 2021. This \$1000.00 is a rent amount the tenants agreed to. Rent was payable on the first day of each month. The tenants signed the agreement in the proper area, confirming they were fully aware of the monthly rent.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants have failed to pay rent. The relevant portions of s. 46 state:

**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.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this *Act* to deduct from rent.

(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.

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Based on the evidence presented, I am satisfied the tenants did not have authority under the *Act* to withhold rent; therefore, s. 46(3) of the *Act* does not apply.

Based on the affirmed testimony of both parties and the tenancy agreement, I find that the tenants were required to pay \$1000.00 in rent per month by the first day of each month in accordance with the written tenancy agreement and pursuant to s. 26(1) of the *Act*.

The tenant testified on November 1, 2021, \$500.00 of the \$1000.00 November rent was paid to the landlord. The tenant stated the partial payment resulted from a bank malfunction. The e-transfer did not go through, and to correct the issue they had to attend the bank in person, and were unable to do so for various reasons. As of the date of the hearing the banking problem has not been resolved. The landlord testified and provided supporting evidence that the tenants were repeatedly late paying rent throughout the tenancy. In other words, this was not a one-off or isolated occurrence.

The tenants agreed to move out of the basement suite effective December 31, 2021 but did not leave until January 4, 2022. I accept the tenant's affirmed testimony that the landlord allowed her to stay in the basement suite until January 4, 2021, as the tenant was prepared to provide text messages between her and the landlord confirming the agreement; therefore, no additional rent for the month of January 2022 is owing to the landlord. Based on the evidence before me, I accept that the tenants have failed to pay \$1500.00 in rent as of December 31, 2021. Given the tenants' failure to pay rent as required by law, the landlord was entitled to serve the tenants with the 10-Day Notice pursuant to s. 46(1) of the *Act*.

I have reviewed the 10-Day Notice issued November 2, 2021, and find it complies with s. 52 of the *Act*. I acknowledge the outstanding rent shown on the 10-Day Notice is \$500.00.

Based on the evidence before me, I accept that the tenants currently owe \$1500.00 in rent. I allow the landlord to amend the Application to seek the full amount of rent outstanding pursuant to rule 4.2 of the Rules. As stated, I accept that the tenants did not have authority under the Act to withhold the rent; therefore, the landlord is entitled to recover the \$1500.00 in unpaid rent.

Given the landlord was successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to s.72(1).

In total the landlord is entitled to \$1600.00. The landlord can keep the \$500.00 security deposit pursuant to section 72(2) of the *Act*. I issue the landlord a Monetary Order for the remaining \$1100.00 pursuant to s. 67 of the *Act*.

### **Conclusion**

The tenant's Application to cancel the 10-Day Notice is dismissed without leave to reapply.

The landlord is entitled to \$1600.00. The landlord can keep the \$500.00 security deposit. I issued the landlord a Monetary Order for the remaining \$1100.00. This Order must be served on the tenants and, if the tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 19, 2022

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Residential Tenancy Branch