



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: CNR, OLC

Landlord: OPR-DR, MNR-DR, FFL

### **Introduction**

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a residential tenancy dispute.

The Tenants applied on November 12, 2021 for:

- an order to cancel a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities, dated November 6, 2021 (the 10 Day Notice); and
- an order for the Landlord to comply with the Act, the regulation, and/or the tenancy agreement.

The Landlord applied on November 14, 2021 for:

- an order of possession, having issued the 10 Day Notice;
- a monetary order for rent not paid in the required time; and
- the filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenants testified they served their Notice of Dispute Resolution Proceeding (NDRP) on the Landlord by placing it at the Landlord's door on November 16, 2021, and calling the Landlord to tell him it was there; the Landlord confirmed he received the NDRP. I find the Tenants' NDRP sufficiently served on the Landlord in accordance with section 71 of the Act, and deem it received by the Landlord on November 19, 2021, in accordance with section 90 of the Act.

The Tenants testified they served their evidence on the Landlord by leaving it at the Landlord's door on February 3, 2021. As the Landlord testified he did not receive the Tenants' evidence, and the Tenants did not provide proof of service of their evidence, I informed the parties I would not consider the Tenants' evidence in my decision. I find the Tenants did not serve their evidence on the Landlord in accordance with section 89 of the Act.

The Landlord testified he served his NDRP and evidence on the Tenants by registered mail to the Tenants' address for service, the address of the rental unit, on November 17, 2021, and provided a Canada Post receipt and tracking number as proof of service. The Tenants testified they did not receive the Landlord's documents. After checking the tracking number to confirm the documents were sent out, not picked up, and returned to sender, I informed the parties I would be proceeding with the Landlord's application and accepting his evidence. I find the Landlord served the Tenants in accordance with section 89 of the Act.

### Preliminary Issues

The Residential Tenancy Branch Rules of Procedure 2.3 states:

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, I dismissed the Tenants' application for an order for the Landlord to comply with the Act, the regulation, and/or the tenancy agreement.

During the hearing, the Landlord testified he was granted an order of possession in a previous hearing; the dispute number is referenced on the cover page of this decision.

Having confirmed that, I dismiss the Tenants' application to dispute the 10 Day Notice, and I dismiss the Landlord's application for an order of possession.

### Issues to be Decided

- 1) Is the Landlord entitled to a monetary order for unpaid rent?
- 2) Is the Landlord entitled to the filing fee?

### Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on October 1, 2021; rent is due on the first of the month; and the Tenants paid a security deposit of \$1,425.00, which the Landlord still holds.

The Tenants stated they still occupy the rental unit.

A copy of the 10 Day Notice is submitted as evidence. The Landlord testified he served the Tenants the 10 Day Notice by attaching it to the door on November 6, 2021, and the Tenants testified they received it on November 7, 2021.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenants failed to pay rent in the amount of \$2,850.00, due November 1, 2021, and utilities in the amount of \$150.00.

The Landlord testified that as the Tenants paid \$150.00 extra for the electric bill for October 2021, they in fact do not owe the Landlord any money for utilities.

The Landlord testified the Tenants made a partial November 2021 rent payment of \$1,100.00, but have not paid any rent for December 2021, January 2022, or February 2022, for a total of \$10,300.00 outstanding.

The Tenant testified that he lost his job in November, and that the Landlord is correct regarding the amount of rent outstanding.

### Analysis

Based on the testimony of the parties, I find that the Landlord served the Tenants the 10 Day Notice by attaching it to the door on November 6, 2021, and it was received by the Tenants on November 7, 2021. I find the Landlord served the 10 Day Notice on the Tenants in accordance with section 88 of the Act.

As the 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form, I find that the 10 Day Notice meets the form and content requirements of section 52.

I accept the affirmed testimony of both parties that the Tenants owe partial rent for November 2021, and all of the rent for December 2021, January 2022, and February 2022.

Pursuant to section 55 (1.1) of the Act, I find the Tenants owe the Landlord unpaid rent as follows:

Month	Monthly rent	Partial payment	Monthly outstanding
November 2021	\$2,850.00	\$1,100.00	\$1,750.00
December 2021	\$2,850.00	\$0.00	\$2,850.00
January 2022	\$2,850.00	\$0.00	\$2,850.00
February 2022	\$2,850.00	\$0.00	\$2,850.00
<b>Total outstanding rent</b>			<b>\$10,300.00</b>

In accordance with section 72 of the Act, I allow the Landlord to retain \$1,425.00 of the Tenants' security deposit in partial satisfaction of the amount owed to the Landlord by the Tenant.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in his application, I order the Tenants to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

I find the Landlord is entitled to a monetary order as follows:

Total outstanding rent	\$10,300.00
Security deposit	-\$1,425.00
Filing fee	\$100.00
<b>Total</b>	<b>\$8,975.00</b>

Conclusion

The Landlord's application is granted.

The Landlord is granted a monetary order in the amount of \$8,975.00 for unpaid rent and the filing fee.

The Landlord was granted an order of possession in a previous hearing, as referenced on the cover page of this decision.

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: February 14, 2022

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Residential Tenancy Branch