



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** Landlord: OPR-DR, MNR-DR, FFL  
Tenant: CNC-MT, OLC, CNR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 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 of the *Act*.

The tenants requested:

- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:30 a.m. The landlord attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. The landlord confirmed that they understood.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenants did not attend this hearing, their entire application is dismissed without leave to reapply.

The landlord gave sworn testimony that on May 3, 2022, copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenants by way of registered mail. The landlord included the tracking information and receipt for the packages in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants deemed served with copies of the landlord's application and evidence on May 8, 2022, 5 days after mailing. The landlord confirmed receipt of the tenants' application and amendment.

The landlord confirmed that the tenants have moved out as of April 16, 2022, and that the landlord did not require an Order of Possession. Accordingly, the landlord's application for an Order of Possession was cancelled.

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment 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 landlord requested an amendment to include additional unpaid rent for the month of April 2022. On this basis, I have accepted the landlord's request to amend their original application from \$974.40 to \$1,948.80 to reflect the unpaid rent that became owing by the time this hearing was convened.

**Issue(s) to be Decided**

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Is the landlord entitled to recover the filing fee for this application?

### **Background and Evidence**

This month-to-month tenancy began on October 15, 2017, and ended on April 16, 2022 after the tenants were served with a 10 Day Notice for Unpaid Rent on March 2, 2022. The monthly rent was set at \$974.40, payable on the first of the month. The landlord still holds a security deposit of \$450.00 for this tenancy.

The landlord testified that the tenants moved out without paying the rent for March and April 2022. The landlord requested a monetary order for the unpaid rent and the filing fee.

### **Analysis**

Section 55(1) and (1.1) of the *Act* reads as follows:

#### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

A copy of the 10 Day Notice was submitted for this hearing, and I find that the landlord's 10 Day Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

**Section 26** 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.

The 10 Day Notice dated March 2, 2022 notes that the tenant failed to pay rent in the amount of \$11,183.00 on or before March 1, 2021. The landlord testified that as of the hearing date, the tenants owed \$974.40 in outstanding rent. Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to sections 55(1.1) and 26 of the *Act*, I find that the landlord is entitled to a monetary order in the amount of \$1,948.80 in outstanding rent for this tenancy.

As the landlord was successful with their application, I allow the landlord to recover the \$100.00 filing fee.

The landlord testified that they were still in possession of the tenant's security deposit in the amount of \$450.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award.

### **Conclusion**

I dismiss the tenants' application without leave to reapply.

I issue a Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent and the filing fee.

<b>Item</b>	<b>Amount</b>
Unpaid Rent for March and April 2022	\$1,948.80
Recovery of Filing Fee	100.00
Less deposit held	-450.00
<b>Total Monetary Order</b>	<b>\$1,598.80</b>

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: June 13, 2022

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Residential Tenancy Branch