



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      RP, CNR, FFT, CNC, ERP (Tenant)  
                                 MNR-DR, OPR-DR, FFL (Landlords)

## **Introduction**

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed their application April 15, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- For a repair order
- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated April 14, 2022 (the “Notice”)
- To dispute a One Month Notice to End Tenancy for Cause dated June 26, 2022 (the “One Month Notice”)
- For an order that the Landlords make emergency repairs
- To recover the filing fee

The Landlords filed their application April 26, 2022 (the “Landlords’ Application”). The Landlords applied as follows:

- For an Order of Possession based on the Notice
- To recover unpaid rent
- To recover the filing fee

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the Notice and One Month Notice as well as the request to recover the filing fee but would dismiss the remaining requests with leave to re-apply because they are not sufficiently related to the dispute of the Notice and One Month Notice. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing packages and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

### **Issues to be Decided**

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlords be issued an Order of Possession based on the Notice?
3. Should the One Month Notice be cancelled?
4. Is the Tenant entitled to recover the filing fee?
5. Are the Landlords entitled to recover unpaid rent?
6. Are the Landlords entitled to recover the filing fee?

### **Background and Evidence**

A written tenancy agreement was submitted. The tenancy started June 10, 2019, and was for a fixed term ending June 09, 2020. The parties agreed the tenancy then became a month-to-month tenancy. The parties agreed rent in the tenancy agreement was \$1,600.00 per month due on the 10<sup>th</sup> day of each month.

The Tenant testified that the parties agreed rent could be paid on the 15<sup>th</sup> day of each month in October of 2021 and relied on a text message between the parties from

October 17, 2021. The Landlord denied that the parties agreed rent could be paid on the 15<sup>th</sup> day of each month.

### ***10 Day Notice***

The Notice was submitted as evidence. The Notice states that the Tenant failed to pay \$3,200.00 in rent for March and April of 2022. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated by the Landlord. The Notice has an effective date of April 24, 2022. The Tenant did not raise an issue with the form or content of the Notice when asked.

The Landlord testified that the Notice was slipped under the Tenant's door April 14, 2022. The Tenant testified that they received the Notice one week after April 14, 2022, because they were not home.

The parties agreed the Tenant owed rent for March and April of 2022 when the Notice was issued. The parties agreed the next rent payment made by the Tenant was on May 04, 2022, for \$1,600.00.

The Tenant disputed the Notice April 15, 2022. The Tenant testified that the basis for their dispute of the Notice is that they explained to the Landlord that they would have issues paying rent on time due to the pandemic's effect on their work. The Tenant said it is not that they did not want to pay rent.

The Landlord testified that they did not agree to the Tenant not paying rent on time for March and April of 2022. The Landlord testified that they told the Tenant in October of 2021 that a new tenancy agreement could be done from the 15<sup>th</sup> to the 15<sup>th</sup> of each month; however, the Tenant refused to enter a new agreement.

The Landlord testified that the Tenant currently owes \$1,600.00 for August rent. The Tenant agreed they have not paid August rent and said they were waiting until the hearing to pay rent. The Tenant acknowledged they did not have authority to withhold August rent.

The Landlord sought an Order of Possession effective two days after service on the Tenant.

I have reviewed the documentary evidence submitted and will refer to it below as necessary.

### ***One Month Notice***

I heard the parties on the One Month Notice; however, I do not find it necessary to outline the evidence here given the decision on the 10 Day Notice.

### **Analysis**

#### ***10 Day Notice***

Section 26(1) of the *Act* states:

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.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 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.

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenant a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenant to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenant withholding rent.

Section 55(1) of the *Act* states:

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...and

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

Based on the written tenancy agreement, I find the Tenant owes \$1,600.00 in rent per month.

In relation to rent being due on the 10<sup>th</sup> or 15<sup>th</sup> of each month, I find rent continued to be due on the 10<sup>th</sup> of each month as stated in the original tenancy agreement. Section 14(2) of the *Act* states:

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. (emphasis added)

The Tenant could not unilaterally decide to change the date rent is due. The parties had to agree to this change. The Landlord did send the following text to the Tenant October 17, 2021:

Hi. If you want to pay rent on 15 every time. Pay me 5 days rent now After that pay me on 15 of the month each time (errors in original)

However, the Tenant replied:

Unfortunately That doesn't work for me sorry.. I will send you the rent when I have it available..(errors in original)

The Landlord further replied:

That means rent consider always late

I find it clear that the parties did not agree to change the date rent is due in the above text message exchange and therefore rent continued to be due on the 10<sup>th</sup> of each month as stated in the tenancy agreement. Further, there are text messages in evidence from after October of 2021 in which the Landlord states that rent is due on the 10<sup>th</sup> of each month, not the 15<sup>th</sup>.

Given the above, I find the Tenant is required to pay \$1,600.00 in rent per month by the 10<sup>th</sup> day of each month pursuant to the tenancy agreement.

Based on the testimony of the parties, I find the Tenant had not paid March or April rent when the Notice was issued April 14, 2022.

The Tenant did not point to any authority under the *Act* to withhold rent for March or April of 2022 and therefore I find the Tenant was required to pay \$1,600.00 by March 10<sup>th</sup> and \$1,600.00 by April 10<sup>th</sup> pursuant to section 26(1) of the *Act*. Further, I find section 46(3) of the *Act* does not apply.

Given the Tenant failed to pay rent as required, the Landlords were permitted to issue the Notice pursuant to section 46(1) of the *Act*.

I accept the Landlord's testimony that the Notice was slipped under the Tenant's door April 14, 2022, because the Landlords submitted a Proof of Service to support this. I do not accept that the Tenant received the Notice one week later because the Tenant disputed the Notice April 15, 2022, and therefore must have received it April 14 or 15, 2022. Pursuant to section 71(2) of the *Act*, I find the Notice was sufficiently served and was received by the Tenant April 14 or 15, 2022.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

Based on the testimony of the parties, I find the next rent payment made by the Tenant after the Notice was issued was on May 04, 2022, in the amount of \$1,600.00. The Tenant was required to pay \$3,200.00 by April 19 or 20, 2022, in order to cancel the Notice pursuant to section 46(4)(a) of the *Act*. Given the Tenant did not pay \$3,200.00 by April 19 or 20, 2022, the Notice was not cancelled.

The Tenant disputed the Notice April 15, 2022, within time. However, the Tenant has not provided any valid basis for disputing the Notice. The Tenant was required to pay rent in accordance with the tenancy agreement unless they had authority under the *Act* to withhold rent. The Tenant has not pointed to any authority under the *Act* to withhold rent. Although the Tenant has provided a reason for not paying rent, the reason provided is not a valid basis to dispute the Notice.

Given the above, the Tenant's dispute of the Notice is dismissed without leave to re-apply. Given this, the Landlords are entitled to an Order of Possession pursuant to section 55(1) of the *Act* and are issued an Order of Possession effective two days after service on the Tenant.

### ***Unpaid Rent***

Based on the testimony of the parties, I find the Tenant has not paid rent for August. The Tenant has not provided any valid basis for withholding rent pursuant to the *Act* and therefore owes August rent. Given this decision is dated August 17, 2022, and the Order of Possession is effective two days after service on the Tenant, I award the Landlords unpaid rent from August 10<sup>th</sup> to August 19<sup>th</sup> of 2022. If the Tenant remains in the rental unit after August 19, 2022, the Landlords can file a further Application for Dispute Resolution for additional monies owed.

### ***Filing Fees***

Given the Tenant has not been successful in the Tenant's Application, they are not entitled to recover the filing fee.

Given the Landlords have been successful in the Landlords' Application, they are entitled to recover the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlords are owed \$626.02 and are issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

### ***One Month Notice***

It is not necessary to decide the validity of the One Month Notice because the tenancy is ending pursuant to the Notice.

### **Conclusion**

The Landlords are issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlords are issued a Monetary Order for \$626.02. This Order must be served on the Tenant and, if the Tenant does 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 *Act*.

Dated: August 17, 2022

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Residential Tenancy Branch