



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** CNR, FFT (Tenants)  
OPR, MNRL-S, MNDCL-S, FFL (Landlords)

## Introduction

This hearing dealt with Cross Applications pursuant to the *Residential Tenancy Act* (the “**Act**”) for:

- authorization to retain all or a portion of the Tenants’ security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- 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 \$10,200.00 pursuant to section 67;
- authorization to recover the filing fee for this application from the Tenants pursuant to section 72.
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- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The Tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:33 a.m. in order to enable the Tenants to call into this teleconference hearing scheduled for 11:00 a.m.. The Landlords were represented at the hearing by their Agent, SM (the “Agent”). The Agent called in at 11:05 a.m. and apologized for calling in late as he had cell phone connectivity issues. The Landlords, SG and HHG also attended the hearing and were given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the Landlords’ Agents, the Landlords, and I were the only ones who had called into this teleconference.

The Agent testified he served Tenants, SFB and KAB separately with the Notice of Dispute Resolution Proceedings (NDRP) and supporting evidence package via registered mail on November 27, 2022. The Agent provided Canada Post tracking numbers confirming this mailing which are reproduced on the cover of this decision. The Agent also provided the Canada Post Proof of Delivery notices in confirmation. I find that the Tenants were deemed served with this package on December 2, 2022, in accordance with s. 88 and 90 of the Act.

At the outset, I advised the Landlord and their Agent of Rule 6.11 of the Rules of Procedure (the “**Rules**”), which prohibits participants from recording the hearing. The Landlords and Agent confirmed that they were not recording the hearing.

I also advised the Landlords and the Agent that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

**Preliminary Issue: Tenants' Applications Dismissed**

Rule 7.3 of the *Rules* 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 reapply.

Further, Rule 2.5 details the evidence that must accompany an Application and Rule 7.5 summarizes what evidence may or may not be considered in the absence of a party to the dispute.

**Rule 2.4. Documents that must be submitted with an Application for Dispute Resolution**

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

**Rule 7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The three (3) dispute applications submitted by the Tenants contain minimal information. On two (2) applications Tenants submitted the 10 Day Notices, the Tenancy Agreement, and on one of the two, some text messages from the Landlord's Agent. One application contained no evidence. Neither Tenant called into the teleconference.

In the absence of attendance at this hearing by the Tenants who were Applicants on three (3) of the four (4) dispute resolution proceedings, I order each of the Tenants' applications dismissed in their entirety, without leave to reapply. The Tenants are not entitled to recover the filing fee from the Landlord.

**Preliminary Issue #2: Predictable Amendment**

In the 10 Day Notice, the Agent/Landlord requested a Monetary Order for unpaid rent in the amount of \$10,200.00 as of November 1, 2022. In the hearing the Agent/Landlord stated the amount does not

include outstanding rent from December 1, 2022 through January 1, 2023, inclusive in the amount of \$6800.00. The Agent/Landlord requests an amendment of the rent owing to reflect the current outstanding balance of \$17,000.00.

Residential Tenancy Policy Guideline 23 (the “Guidelines”) “Amending an Application for Dispute Resolution” subsection F provides as follows:

**F. PREDICTABLE AMENDMENTS**

In accordance with rule 4.2 (Amending an application at the hearing), when the amount of rent owing has increased since the time the application initially was filed, or in other circumstances that can reasonable be anticipated, the application may be amended through an oral request at the hearing. If such an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be filed or served.

I grant the Agent/Landlord’s request and amend the rental arrears to reflect the current outstanding balance of \$17,000.00.

**Issues to be Decided**

Are the Landlords entitled to:

- 1) an order of possession;
- 2) a monetary order for XXX;
- 3) recover the filing fee;
- 4) retain the security deposit in partial satisfaction of the monetary orders made?

Are the Tenants entitled to:

- 1) an order cancelling the Notice;
- 2) recover the filing fee?

**Background and Evidence**

While I have considered the documentary evidence and the testimony of the Landlord, 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 fixed term tenancy agreement starting September 1, 2021 and ending on August 20, 2022 continuing on as a periodic month to month tenancy. Monthly rent is \$3400.00 and is payable on the first of each month. The Tenants paid the Landlord a security deposit of \$1700.00. The Landlord still retains this deposit.

The Agent testified that he has had several conversations with the Tenants. In fact, he spoke with KAB recently. The Tenant stated that she wasn’t sure if she would attend the hearing and likely would not if they moved out. She told the Agent she filed for dispute resolution as a “place holder”. The Tenants planned to vacate the rental unit on January 15, 2023. The Agent stated because of the location of the rental unit in proximity to his address he has been unable to confirm if the Tenants have, in fact, moved

out. He plans to drive to the rental unit within a few days. He requests an Order of Possession effective two (2) days after service upon the Tenants.

The Agent stated that he became the Landlords' Agent after the Landlord had issued the first 10-Day Notice (the "Notice"). He stated that the Notice contained incorrect information, specifically the wrong rent amount, and rather than ask an arbitrator to amend the Notice, he reissued the Notice with the correct information. The Agent testified on November 2, 2022 he personally delivered the 10 Day Notice to the Landlords' adult son. Delivery was witnessed by MM and a Proof of Service Form uploaded into evidence.

The Agent submitted the Landlord's Ledger into evidence. The Agent does not collect rent on behalf of the Landlords..

Date Due	Monthly Rent Amt Due	Previous Bal Carried Forward	Amount Paid	Date Paid	Balance Due
01/sep/2022	\$3400.00	N/A	\$0		\$3400.00
01/oct/2022	\$3400.00	\$3400.00	\$0		\$6800.00
01/Nov/2022	\$3400.00	\$6800.00	\$0		\$10,200.00

In affirmed testimony the Landlord stated that the Tenants have not paid rent since September and have no right to not pay rent. The Landlord seeks an amendment to the Monetary Order to include December 2022 and January 2023 rent.

### **Analysis**

Section 26(1) of the Act requires Tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the Act.

#### **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.

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 not 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 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 undisputed testimony of the Agent/Landlord, I am satisfied the Tenants are required to pay \$3400.00 in rent per month by the first day of each month pursuant to the tenancy agreement and have no legal authority to withhold rent under the Act.

Based on the undisputed testimony of the Agent/Landlord, I accept the Tenants have failed to pay rent in the amount of \$3400.00 as of September 1, 2022. Given the Tenants failed to pay rent as required, the Landlords were entitled to serve the Tenants with the Notice pursuant to s. 46(1) of the Act.

Based on the undisputed testimony of the Agent and Proof of Service forms, I am satisfied the Notice was served on the Tenants in accordance with s. 88(e) of the Act on November 2, 2022.

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

Based on the undisputed testimony of the Landlord, I accept that the Tenants currently owe \$17,000.00 in rent. I allow the Landlords 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 rent; therefore the Landlords are entitled to recover \$17,000.00 in unpaid rent.

Given the Landlords were successful in the application, I award them \$100.00 as reimbursement for the filing fee pursuant to s. 72(1) of the Act.

In total, the Landlords are entitled to \$17,100.00. The Landlord can retain the \$1700.00 security deposit pursuant to s. 67 of the Act in partial satisfaction of this order. I issue the Landlords a Monetary Order for the remaining \$15,400.00 pursuant to s. 67 of the Act.

### **Conclusion**

The Tenants did not attend the hearing. Their three (3) applications are dismissed without leave to reapply.

The Landlords are entitled to an Order of Possession effective two (2) days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlords are entitled to \$17,100.00. The Landlords can keep the \$1700.00 security deposit. I issue the Landlord a Monetary Order for the remaining \$15,400.00. 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 16, 2023

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Residential Tenancy Branch