



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

Dispute Codes: CNR FFT OPR-DR MNR-DR

### **Introduction**

The Tenants seek an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) under section 46 of the *Residential Tenancy Act* (“Act”).

The Tenants seek to recover the cost of the application fee under section 72 of the Act.

The Landlord seeks an order of possession and a monetary order for unpaid rent.

### **Issues**

1. Are the Tenants entitled to an order cancelling the Notice?
2. Are the Tenants entitled to recover the cost of the application fee?
3. Is the Landlord entitled to an order of possession?
4. Is the Landlord entitled to a monetary order for unpaid rent?

### **Background and Evidence**

In reaching this decision, I have only reviewed and considered oral and documentary evidence meeting the requirements of the Rules of Procedure, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

Both Tenants and one of the Landlord’s representatives (C.O.) were affirmed before they provided testimony or made submissions, and there were no issues in respect of the service of documentary evidence.

The tenancy began either March 28 or April 1 of 2018. Rent, due on the first day of the month, is \$1,471. There is no security or pet damage deposit attached to this tenancy. A copy of the tenancy agreement is in evidence.

The particulars of the Landlord's application state the following:

Reminder letters sent to tenant repeatedly since Jan 2022 regarding arrears. Tenant served Notice to end tenancy if rent arrears or repayment agreement not signed but tenant failed to settle or honour repayment agreements. Tenant has ongoing arrears since tenancy started in April 2018 and repeatedly fails to pay approved repayment arrangements set up and agreed to by tenant and landlord.

As a result, the Landlord served the Notice in-person on November 2, 2022. A copy of the Notice was in evidence, and it reflects the fact that as of November 1, 2022 the Tenants failed to pay rent (both the rent due on the first day of the month and previous unpaid rent) in the amount of \$17,626. Also submitted into evidence was a copy of the Landlord's account invoice statement for the Tenants, and the statement reflects an accumulated balance of rent arrears for this amount.

The Landlord's agent testified that as of March 1, 2023 rent arrears are \$21,538. The agent further testified that partial payments were received in November but that the Landlord advised the Tenants that any such payments were for use and occupancy only. (In other words, such rent payments did not cancel the Notice or reinstate the tenancy.) The agent testified that there was a repayment agreement but that it was not adhered to.

Multiple notices to end tenancy were previously issued but given the ongoing non-payment of rent and mounting arrears, the Landlord's board of directors directed that a final notice to end the tenancy be issued and enforced. The agent confirmed that the Tenants were warned and put on notice that the Landlord would be following through on enforcing the Notice.

The Tenants testified that "we're not saying the [amount of] arrears aren't right," but they also testified that they had asked the Landlord multiple times for the precise amount of the arrears and never got a reply. They testified that "we never really got a straight answer" from the Landlord. Some amounts were paid, they acknowledged, and then remarked the amount of the rent "is wrong."

The Tenants spoke about the rent being geared to income and that the Landlord was basing the rent off of old, previous income information. As for the previous notices to end tenancy for unpaid rent, one of the Tenants explained that the previous Landlord's representative said they were given merely as a formality—"it's a love letter" they had told the Tenants—and that it was only when the new portfolio manager took over that things were pushed toward a dispute.

### Analysis

When a tenant disputes a notice to end a tenancy the onus, or obligation, to prove the reason for issuing that notice falls on the landlord. The standard of proof is on a “balance of probabilities,” which means that it is more likely than not that the facts occurred as claimed, and which thus form the basis on which a notice was given.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord’s evidence proves that the Tenants did not pay the rent on November 1, 2022. I thus find on a balance of probabilities that the Notice was given for a valid reason, namely, the Tenants’ non-payment of rent. I further find that the Notice complies with form and content requirements of section 52. Last, there is no evidence before me to find that the Tenants had a legal right to withhold or otherwise not pay the rent.

While the Tenants remarked about the amount of the rent being wrong, they provided no documentary evidence to prove that the Landlord had, in fact, calculated the rent amount incorrectly. There is no evidence before me to find that the Tenants ever disputed the amount of the rent as it is set out in the tenancy agreement. And I am not persuaded that the Landlord would have never provided any statement showing the amount of the arrears to the Tenants.

Given the above, I find that the Tenants’ application for an order cancelling the Notice must be dismissed. The Tenants are not entitled to an order cancelling the Notice. They are also not entitled to recover the cost of the application fee.

Based on the above findings, the Landlord is granted an order of possession pursuant to section 55(1) of the Act. A copy of the order of possession is issued with this Decision and it must be served on the Tenants. The Tenants have two days to vacate the rental unit from the date of service or from the date of deemed service.

Since the Tenants’ application relates to a section 46 notice to end tenancy, and because the Landlords seeks a monetary order for unpaid rent, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act.

The Landlord's evidence persuades me, on a balance of probabilities, that the Tenants owe \$21,538 in unpaid rent. Thus, the Tenants are ordered, pursuant to section 55(1.1) of the Act to pay this amount to the Landlord.

A monetary order for this amount is issued with this Decision to the Landlord, who must serve a copy of the monetary order upon the Tenants forthwith.

Conclusion

The Tenants' application is hereby dismissed without leave to reapply.

The Landlord's application is hereby granted.

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: March 18, 2023

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Residential Tenancy Branch