



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **CNR, MNDCT, DRI, OLC, FFT**

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on November 27, 2022, to dispute a rent increase, for monetary compensation for loss or other money owed, to have the landlord comply with the Act and to recover the cost of the filing fee.

Only the landlord appeared, with their agent. The tenant did not appear although this application was filed by the tenant. On March 15, 2023, the tenant confirmed with the Residential Tenancy Branch by email that the hearing was still required. The tenant was also sent a notification on April 8, 2023, by email reminding them of the upcoming dispute scheduled for April 11, 2023, at 9:30 am.

This matter was set for hearing by telephone conference call at 9:30 A.M on March 11, 2023. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Respondent. Therefore, as the Applicant did not attend the hearing by 9:40 A.M, and the Respondent appeared and was ready to proceed, I dismiss the tenant’s claim without leave to reapply.

### **Preliminary and Procedural Issues**

In this case, the tenant did not name the landlord properly in their application, as they did not include the landlord’s surname. I have amended the style of cause on the covering page of the decision to reflect the landlord’s proper name.

Although I have dismissed the tenant's application without leave to reapply, I must consider section 55 of the Act.

### Issue(s) to be Decided

Should the landlord be granted an order of possession?

Should the landlord be granted a monetary order for the unpaid rent?

### Background and Evidence

The landlord testified that the tenant and the co-tenants rented the premises, and the rent was \$2,400.00 per month. The landlord stated that the tenants each paid a portion of the rent and the tenant named in the application portion was \$700.00. The landlord stated that this was not a tenancy in common.

The landlord stated that the tenant did not pay rent of \$700.00 for November and was served with the Notice and then failed to pay rent for December 2022 and rent for January, February and March 2023. The landlord seeks a monetary order for unpaid rent in the amount of \$3,500.00. The tenant filed a copy of the Notice as evidence with their application.

The landlord testified that the tenant named in the application vacated sometime in January 2023; however, they left some belongings behind like a bed. The landlord stated that the co-tenants vacated in March 2023, and they removed their own belonging and paid their portion of the rent. The landlord stated they are unsure if they need an order of possession.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

As the tenant's application is dismissed, I must consider the provisions of section 55(1.1) of the Act. I find the Notice complies with section 52 of the Act.

### **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.

The evidence of the landlord was that the tenant named in the application vacated the premises sometime in January 2023 and the co-tenants vacated in March 2023. Although the landlord should not require an order of possession as it appears the rental unit is vacant and the tenant has abandoned some minor personal property; however, I have granted the landlord an order of possession should they attend the premises and find the tenant has returned.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

In this case the rent was \$2,400.00 for the joint tenancy. The tenant and the co-tenants portion the rent between themselves. The tenant named in the application paid the amount of \$700.00. The tenant did not pay their portion of rent for November, December 2022 and January, February and March 2023. The tenant was obligated to pay the rent until the all the tenants vacated premises. I find the tenant breached section 26 of the Act, when they failed to pay the rent. Therefore, I find the landlord is entitled to a monetary order for the unpaid rent in the amount of **\$3,500.00**.

I order that the landlord to retain the security deposit of **\$333.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 and 55 of the Act for the balance due of **\$3,167.00**.

### Conclusion

The tenant's application is dismissed without leave to reapply. The landlord is granted a monetary order for unpaid rent and an order of possession.

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: April 12, 2023

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Residential Tenancy Branch