



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNT-MT, DRI, RP, OLC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant(s) filed under the Residential Tenancy Act (the “Act”), be allowed more time to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on February 8, 2023, to dispute an illegal rent increase, to have the landlord make repairs to the rental unit, to have the landlord comply with the Act, and to recover the cost of the filing fee.

This matter was set for hearing by telephone conference call at 1:00 P.M on this date. The line remained open while the phone system was monitored for twelve minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 1:12 P.M, even after they received on April 29, 2023, a reminder notification of their upcoming hearing. Therefore as the landlord appeared and was ready to proceed, I dismiss the tenant’s application without leave to reapply.

Further, the tenant acknowledged in their application that they received the Notice on March 13, 2023; however, this cannot be true as the tenant submitted their application on March 6, 2023, to dispute the Notice. As the effective date of the Notice was February 17, 2023, and the tenant applied on March 6, 2023, I find the tenant’s application to cancel the Notice is barred from being heard as the director must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date within the Notice.

Although I have dismissed the tenant’s application, I must still consider the provisions of section 55 of the Act, as I must grant the landlord an order of possession and a monetary order for unpaid rent.

I have amended the tenant's application to correct the proper name of the landlord. I do not find this prejudicial to either party. I have removed the name of the landlord's agent and inserted the corporate landlord.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

### Issue to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The tenancy began on April 1, 2021. Rent in the amount of \$1,500.00 was payable on the first of each month. A security deposit of \$775.00 was paid by the tenant.

The tenant described in their application that they are disputing the Notice because:

Describe why you are disputing the notice and why you are filing late:

They are cashing there rent cheques and only for September 14, 2022, Oct 07 2022, Jan 01 2023, feb 08 023 these dates are way after they cash rent cheques. Because its not accurate I call to make sure rent was cashed.

The landlord testified that the tenant received a rent increase effective April 1, 2022, increasing the rent to the amount of \$1,573.00. The landlord stated that they issued the Notice because the tenant refused to pay the \$23.00 per month. The landlord stated that the arrears in the Notice was the amount of \$276.00 and the tenant has further failed to pay the subsequent rent of \$23.00 for March, April and May 2023. The landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$386.00.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find 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.

Since the tenant applied to dispute the Notice after the effective date of the Notice and the tenant has submitted false submissions in their application that it was received on March 13, 2023, which was impossible as they made their application on March 6, 2023, and I have dismissed the tenant's application for more time to be allowed to dispute the Notice. I find the provision of section 46(5) of the Act apply. I find the tenancy legally ended on the effective date within the Notice

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.

I accept the landlord's undisputed testimony that the tenant was served with a rent increase that the rent of \$1,550.00 was increase to \$1,573.00 effective April 1, 2022, which the tenant failed to pay the increase since it was due. I find the tenant breached the Act when they failed to pay the rent increase as permitted by the Act.

I find that the landlord is entitled to monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act in the amount of **\$368.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Should this amount remain unpaid at the end of the tenancy the landlord is entitled to keep the above award, pursuant to section 38(3) of the Act.

Conclusion

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

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: May 02, 2023

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Residential Tenancy Branch