



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, OPR, MNR, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on April 4, 2023;
2. For to be paid back for the cost of emergency repairs;
3. For compensation for monetary loss or other money owed;
4. To reduce rent for repairs;
5. To have the landlord make repairs to the rental unit;
6. To suspend or set conditions of the landlord right to enter; and
7. To have the landlord comply with the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The tenant requested that they would like this matter to be adjourn to August 31, 2023, because they have not had time to submit their evidence as they were away for a couple of weeks, their computer is broken and have been unable to retrieve their evidence, and they were unable to obtain their banking records from the bank as they were told they did not have them. The tenant stated that on August 31, 2023, they have

a hearing to cancel a One Month Notice to End Tenancy for Cause, and other relief under the Act.

The landlord's agent stated that they are not consenting to this matter be adjourned because the tenants have not paid the outstanding rent.

In this case, I am not prepared to adjourn the landlord's application or the tenant's request to cancel the Notice as it would be highly prejudicial to the landlord to continue a tenancy when rent has been admitted not paid.

However, Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, which I note these are also claimed in their application for dispute resolution to be heard on August 31, 2023. I note the tenants have significantly increase their claim. Therefore, I decline to hear the remaining items in the tenants' application, and they can be heard on August 31, 2023.

The tenant confirmed receipt of the landlord's evidence submissions.

I have amended the style of cause in the tenants' application to reflect the correct name of the landlord as shown in the landlord's application. This is not prejudicial to either party.

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

Should the Notice be cancelled?

### Background and Evidence

The tenant testified that they received the Notice on April 4, 2023. The tenant confirmed they did not pay the outstanding rent owed for January 2023 to the landlord because they have been working hard to establish a business. The tenant stated that rent was March and April 2023 were paid in full. However, the landlord should allow them to pay the outstanding rent when they have the ability to do so.

The landlord testified that the tenant failed to pay rent of \$916.00 for rent due in 2019, which they had arranged a payment scheduled; however, the tenant did not make the final payment.

The landlord testified that the tenants only paid rent of \$1,900.00 for May 2022 and owes \$1,000.00. The tenants only paid \$1,000.00 for July 2022, owing \$1,900.00. The tenants only paid only \$1,450.00 for January 2023, owing \$1,450.00. The landlord stated that the tenant owes \$5,266.00. Filed in evidence are copies of the landlord's bank account history of e-transfers which support the landlord claim.

The tenant testified that they don't agree with the amount owed as there are e-transfer missing and that the landlord agreed that they could deducted a \$1,000.00 from the rent. The tenant stated they were unable to provide any evidence because their computer is broken, and the bank told them they could not obtain a copy of their banking records. The tenant stated that the landlord only wants to evict them to obtain a higher rent.

The landlord stated that they would give the tenants until June 15, 2023, to vacate, subject to half the rent of \$1,450.00 being paid on June 1, 2023.

### Analysis

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

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*.

...

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent .a

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application had no merit as the tenant admitted at the hearing and in their application that they were behind in the rent, and it was not paid within 5 days after receiving the Notice.

While I accept the tenant may be attempting to establish their own business; however, that business does not take priority over their obligations under the Act. The landlord also has a business of renting and is entitled to end the tenancy if the tenants fail to pay rent..

Therefore, I dismiss the tenants' application to cancel the Notice without leave to reapply.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 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.

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. The landlord has agreed that they would not enforce the order until June 15, 2023, if the tenants pay \$1,450.00 on June 1, 2023, as rent was prorated for June 2023. This order may be filed in the Supreme Court

and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant.

I accept the landlords' testimony that the tenants have failed to pay rent of \$916.00 for 2019, \$1,000.00 for May 2022, \$1,900.00 July 2022 and \$1,450.00 for January 2023. The landlord testimony was support with the entire history of rent payments received by etransfer. I find it highly unlikely that any payments are not showing as this was not a redacted history and show payments also made by other people.

While the tenant indicated that they have evidence on their computer that they have not been able to retrieve because it is broken. However, I cannot consider evidence that is not before me. Further, I do not accept the evidence of the tenant that they cannot attend their bank and request copies of their bank statements and/or the history of etransfers. Banks are required by law hold these records for a considerable amount of time.

I find the tenant owes \$5,266.00 to the landlord in unpaid rent. I find the landlord has established a total monetary claim of **\$5,366.00** comprised of unpaid rent and the \$100.00 file fee.

Should this amount remain unpaid at the end of the tenant the landlord may exercise their rights under section 38(3) of the Act to retain the security deposit and pet damage deposit to offset the amount owed.

### Conclusion

The tenant's application is dismissed. The landlord's application for an order of possession and a monetary order for unpaid rent is 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 *Residential Tenancy Act*.

Dated: May 26, 2023

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Residential Tenancy Branch