



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes: CNR, MNRT, MNDCT, DRI, RR, ERP, RP, AAT, PSF, LRE, OLC**

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenants repeated applications 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 April 6, 2023, to be paid back for the cost of emergency repairs, for monetary compensation for monetary loss or other money owed, to dispute a rent increase that is above the amount allowed by law, to reduce rent for repairs, services, or facilities agreed upon but not provided, to have repairs made to the unit, to provided services or facilities required by the tenancy agreement or law, to suspend or set conditions on the landlord’s right to enter the rental unit, to have the landlord comply with the Act and to recover the cost of the filing fee.

Both parties appeared and gave testimony.

### **Preliminary and Procedural Issues**

At the outset of the hearing, it was determined that the tenant did not comply with the Residential Tenancy Rules of Procedures as they did not submit a monetary worksheet with their application or any evidence. The tenant did not provide these documents to the Residential Tenancy Branch or to the landlord until May 17, 2023, 13 days before the hearing, which is late.

Further, Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. **This means it is my sole discretion to do so.**

In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only

consider the tenants request to set aside the Notice and the requirements of section 55 of the Act. The balance of the tenants' applications is dismissed, with leave to reapply.

**At the hearing the tenant was caution several times** as the tenant was rude, hostile, and acted inappropriately and had to be muted on several occasions. The tenant was also cautioned that they could be excluded from the hearing. Although I found this was unnecessary, as I found it more appropriate to leave the tenant on mute. **The tenant is cautioned** should they make any future application they must comply with Rule 6.10, or they will be excluded from the hearing.

The only evidence I have considered at today's hearing is the tenancy agreement and the Notice, as the tenants did not serve their monetary worksheet with the application or serve their evidence on time in accordance with Rules 2.5, or 3.14. Should the tenants willfully fail to comply with the Rules or the Act at any future hearing they are at risk of having their evidence excluded and their application dismissed.

I refer only to relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice be cancelled?  
Is the landlord entitled to an order of possession?  
Is the landlord entitled to repayment of rent?

### Background and Evidence

The tenancy began on March 1, 2022. Rent in the amount of \$2,100.00 was payable on the first. A security deposit of \$900.00 and a pet damage deposit of \$900.00, was paid by the tenants.

The tenant argued that the tenancy agreement does not show that rent was due on the first each of month. As this is shown in the tenancy agreement.

<b>3. RENT</b> (please fill in the information in the spaces provided)	
a) <b>Payment of Rent:</b>	
The tenant will pay the rent of \$	<u>2100</u> each (check one) <input type="checkbox"/> day <input type="checkbox"/> week <input checked="" type="checkbox"/> month to the landlord on
the first day of the rental period which falls on the (due date, e.g., 1st, 2nd, 3rd, .... 31st)	<u>1st</u> day of each
(check one) <input type="checkbox"/> day <input type="checkbox"/> week <input type="checkbox"/> month subject to rent increases given in accordance with the RTA.	
The tenant must pay the rent on time. If the rent is late, the landlord may issue a <i>Notice to End Tenancy for Unpaid Rent</i> (form RTB-30) to the tenant, which may take effect not earlier than 10 days after the date the notice is given.	

The tenants submit in their application that they received the Notice on April 6, 2023. The tenants submit in their application the reasons why they are disputing the Notice, which reads as follows:

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Date notice was received: Apr 6, 2023

Notice delivery method: Sent by registered mail

Describe why you are disputing the notice:

LAND OWNER OWES TENANT MORE THAN DISPUTED UNPAID RENT.

The tenant acknowledged they did not pay rent for April and May 2023 because the landlord owes the tenants more than the rent.

Legal counsel for the landlord submits that they have already received an order of possession for failure to pay rent for March 2023, which they are currently waiting for the bailiffs to enforce the order.

Legal counsel for the landlord submits the tenants have not paid rent for April and May 2023 and the seek a monetary order for the unpaid rent.

### Analysis

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

In this case, the tenant argued that the tenancy agreement stated that rent is due on the 1<sup>st</sup>; however, the box is not checked to say if it is day or week or month. While this may be true, this is a month-to-month tenancy which commenced on the 1<sup>st</sup> day. I highly doubt the tenant was to pay a daily rent or \$2,100.00 weekly rent. I find the tenant's position unreasonable and is simply arguing with anything that is presented. I find rent was due on the 1<sup>st</sup> day of the month.

***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.***

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, such as an order from an Arbitrator.

While I accept the tenant may believe that they are entitled to compensation; however, the tenants cannot withhold simply because they feel they are entitled to compensation. I find the tenants breached section 26 of the Act when they failed to pay rent for April and May 2023. I find the Notice is valid and remains in full force. I find the tenants owe the landlord **\$4,200.00**. Therefore, I dismiss the tenants' application without leave to reapply. The tenants are not entitled to recover the cost of the filing fee.

As the tenant's application is dismissed, I must consider the provisions of 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.

Although the landlord is entitled to an order of possession; I find it would serve no purpose because the landlord currently has an order of possession and are waiting enforcement by the bailiffs.

The tenants should be aware, that any costs incurred by the landlord to enforcement that order, that the tenants can be held responsible to pay. I would recommend to the tenants to comply with the order before it is enforced, because bailiff cost are extremely

high, and the removal of the tenant's and their belongings are done without notice to the tenants.

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 **\$4,200.00**.

I order that the landlord retain the security deposit of **\$900.00** and pet damage deposit of \$900.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,400.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenants' application to cancel the Notice is dismissed. Although the landlord would be entitled to an order of possession; however, I find it unnecessary as they have already received one and are waiting for enforcement. The landlord is entitled to keep the security deposit and pet damage deposit to offset the rent owed. The landlord is granted a formal order for the balance due of rent owed.

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 30, 2023

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Residential Tenancy Branch