



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR-MT, RP, OPR, MNRL-S, FFL

### Introduction

This hearing was convened in response to applications by the landlord and the tenants filed under the Residential Tenancy Act (Act).

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To be allowed more time to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued on April 6, 2023; and
2. To have the landlord make repairs.

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

### Issue to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

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

Is the landlord entitled to keep the security deposit in partial satisfaction?

### Background and Evidence

The tenancy continued when the property was purchased by the landlord. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenants.

The tenants testified that they received the Notice on April 6, 2023. The tenant stated that rent was not paid in full within 5 days. The tenants stated they informed the landlord that they had the rent; however, the landlord was told that it would be withheld until the landlord repairs the washer. Filed in evidence is a copy of the Notice.

The tenants acknowledged that they have not paid rent for March, April and May 2023. The tenants stated that they spent \$500.00 of the rent to purchase a new appliance.

The landlord testified that the tenants not paid rent for March, April and May 2023. The landlord stated that they are agreeable that the \$500.00 be deducted from rent owed.

### Analysis

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

**26** (1) of the Act, states 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 has been completed in accordance with the requirements of section 52 of the Act.

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

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's' application must be dismissed as the tenants admitted rent was not paid within 5 days after receiving the Notice because they withheld rent because a repair was needed to the washing machine.

At no time do the tenants have the right to simply withhold rent because they feel they are entitled to do so. A repair to an appliance is not grounds under the Act to withhold the rent. Therefore, I dismiss the tenants' application without leave to reapply.

Further, the evidence of the parties supports rent in the amount of \$3,000.00 remains unpaid.

As the tenants' application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55(1) of the Act. I further find the landlord is entitled to a monetary order pursuant to section 55 (1.1) of the Act for the prepayment of rent owed for March, April and May 2023.

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 **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I find the tenants breach the Act when they failed to pay rent. I find the tenants owe the landlord \$3,000.00. The landlord agreed to reimburse the tenants for the appliance and agreed that the amount of \$500.00 will be reduced the rent owed to \$2,500.00. Therefore, I find the tenants owe the landlord **\$2,500.00**

I find that the landlord has established a total monetary claim of **\$2,600.00** comprised of unpaid and the \$100.00 fee paid by the landlord for this application. 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 tenants.

I have not offset the security deposit as the tenants indicated they would pay the landlord the outstanding rent after the hearing. Should the rent be paid the above monetary order is cancelled.

However, should the rent remain unpaid at the end of the tenancy the landlord can exercise their rights under section 38(3) of the Act.

### Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession and a monetary order as set out above.

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: June 1, 2023

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Residential Tenancy Branch