



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      CNR-MT, RP  
                                 OPR-DR, MNR-DR, FFL

### **Introduction**

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s April 14, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling the notice to end tenancy for unpaid rent (the “Notice”), under section 46(4)(b) of the Act;
- (ii) more time to dispute the Notice under section 66 of the Act; and
- (iii) an order for repairs to be made to the rental unit under section 32 of the Act.

In addition, under section 58 of the Act, this hearing dealt with the landlord’s April 28, 2023, application to the Residential Tenancy Branch for:

- (i) an order of possession on the Notice under section 55(2)(b) of the Act;
- (ii) a monetary order for unpaid rent under section 67 of the Act; and
- (iii) authorization to recover the cost of the filing fee under section 72 of the Act.

### **Preliminary Issue - Unrelated Claims**

*Rules of Procedure 2.3* states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the tenant’s and landlord’s claim regarding the Notice is not sufficiently related to the tenant’s other claim to warrant that they be heard together. I exercise my discretion to dismiss the tenant’s other claim with leave to reapply and will deal only with the Notice.

### **Issues**

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to recover the cost of the filing fee?

### Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began January 11, 2020. Rent is \$913.50 due on the first day of the month. The landlord currently retains a \$450.00 security deposit and a \$450.00 pet damage deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on April 13, 2023, by delivering to the tenant in person, who was there to receive it. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$927.00 that was due on April 1, 2023. All pages of the Notice were served and submitted into evidence. The tenant applied to dispute the Notice on April 14, 2023.

The landlord affirmed that the tenant is currently \$2,754.00 in rental arrears, representing unpaid rent from March 2023 to the present.

The tenant affirmed that:

- the tenant withheld rent because the tenant had issues with the tenant's neighbours and the landlord refused to help the tenant in resolving these issues.
- the tenant also withheld rent because there were repairs that needed to be done in the rental unit, which the landlord refused to do.

### Analysis

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 46(1) of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day rent remains unpaid after the day rent is due.

The landlord's evidence shows that the tenant is currently \$2,754.00 in rental arrears,

representing unpaid rent from March 2023 to the present. The tenant's evidence shows that:

- the tenant withheld rent because the tenant had issues with the tenant's neighbours and the landlord refused to help the tenant in resolving these issues.
- the tenant also withheld rent because there were repairs that needed to be done in the rental unit, which the landlord refused to do.

As the reasons provided by the tenant for not paying rent are not valid reasons for withholding rent under the Act, I find that the tenant is currently \$2,754.00 in rental arrears. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason.

While the Notice, which was submitted as evidence by the tenant, appears to be missing the landlord's signature, under section 68 of the Act, an arbitrator may amend a notice to end tenancy that does not comply with section 52 [form and content of notice to end tenancy] if the arbitrator is satisfied that:

- the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- in the circumstances, it is reasonable to amend the notice.

As the Notice was served on the tenant by the landlord's agent KH in person, who is also listed in the tenancy agreement as agent for the landlord, I find that that the tenant should have known that the landlord was the one issuing the Notice. Therefore, I find that it would be reasonable to amend the Notice to include the signature of the landlord. As a result, I find that the Notice complies with the form and content requirements of section 52. Thus, the tenant's application to cancel the Notice is dismissed.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant.

Since the landlord's application relates to a section 46 notice to end tenancy, the landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay \$2,754.00 to the landlord.

Since the landlord was successful in its application, the landlord is entitled to \$100.00 to cover the cost of the filing fee under section 72 of the Act. In total, the landlord is awarded \$2,854.00.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$450.00 security deposit and \$450.00 pet damage deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$1,954.00 is attached to this Decision and must be served on the tenant.

### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is granted. The landlord is awarded an order of possession and a monetary order in the amount of \$1,954.00.

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 20, 2023

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Residential Tenancy Branch