



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Tenants **CNR-MT, MNRT, MNDCT, RR, RP, OLC, FFT**  
Landlord **OPR-DR, MNR-DR, FFL**

### **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 based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on
2. For a monetary order for unpaid rent;; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To be allowed more time to dispute the Notice;
2. To recover the cost of emergency repairs;
3. For compensation for monetary loss or other money owed;
4. To be allowed to reduce rent for repairs;
5. To have the landlord make repairs to the rental unit; and
6. 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.

### **Preliminary Issues**

The landlord submits they served their application and notice of hearing on both tenants named in their application by registered mail sent on May 12, 2023. Canada Post tracking numbers were provided as evidence. The Canada Post tracking numbers show that both packages were received by the recipients on May 15, 2023. I find the tenants were served in accordance with the Act.

At the outset of the hearing, I had determined CS is not a tenant under the Act, CS was not added to the tenancy agreement as required by the Act. I find CS is an occupant. I have removed CS from the style of cause as they are not a tenant.

At the outset of the hearing, CS stated that DK is no longer a tenant because they had moved out. CS stated that is not up to the tenant to prove proof that CS ended the tenancy. The landlord's agent stated that there is no evidence that DK ended the tenancy in accordance with the Act.

In this case, DK was not removed from the tenancy agreement that is before me. Filed in evidence is a copy of the tenancy agreement. DK received the hearing package in accordance with the Act, I find DK is a tenant under that tenancy agreement. Whether DK vacated is not relevant as they had to have given the landlord written notice to end their tenancy in accordance with the Act, or by consent of all parties to be removed from the tenancy agreement to be released from their obligation under the Act.

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 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 and if the tenants were entitled to withhold rent to recover the cost of emergency repairs.

I find balance of the tenants' application not sufficiently related to be determined during these proceedings. I will, therefore, only consider the above matters. The balance of the tenant's application is dismissed, with leave to re-apply.

As the landlord's application as it is directly to the tenant's request to cancel the Notice, and I must consider their claim, even if the landlord did not file an application pursuant to section 55 of the Act. The landlord's application will be fully considered.

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?

Are the tenant's entitled to recover the cost of emergency repairs?

Is the landlord entitled to an order of possession and a monetary for repayment of rent?

### Background and Evidence

The tenancy began on December 1, 2019. Rent in the amount of \$1,800.00 was payable on the first of each month. A security deposit of \$900.00 was paid by the tenant

The tenant acknowledged in their application that they received the Notice on May 1, 2023. The Notice filed in evidence shows that the tenants had failed to pay rent in the amount of \$5,400.00.

The tenant further submits in their application that seek to be paid back the cost of emergency repairs in the amount of \$555.00; however, no receipts were provided.

The tenant's agent testified that the tenant did not pay rent because of issues with the rental unit and that they had to make emergency repairs which total \$6,000.00. The agent stated they did not submit any receipts as they had just been obtained.

The landlord testified that the tenants have not paid any rent for February, March, April, May and June 2023 and owe the landlord \$9,000.00 for repayment of rent.

### Analysis

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

### **Rules about payment and non-payment of rent**

***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 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 they paid for emergency repairs as defined by the Act, and Regulations.

Although the tenant's agent argued that they paid for emergency repairs, which their application indicates the amount of \$555.00, not \$6,000.00; however, they did not provide any proof of payment or any invoices or any evidence that they complied with the provisions of the Act.

Further, the tenant's agent indicate they only recently received copies of the invoices, which I find problematic as they had to have the invoices and had to have provided proof of payment paid for those services before they decided to withhold rent for February 2023. I find the tenants have failed to prove that they had paid for emergency repairs in any amount.

I find the tenants have breached section 26 of the Act, when they failed to pay rent as stated above. I find the tenants did not have the authority under the Act to deduct any portion from the rent. At no time does the tenants have the right to simply withhold rent because they feel they are entitled to do so. Therefore, I dismiss the tenant's application without leave to reapply.

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

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 that the landlord is entitled to monetary order for the repayment of unpaid rent, pursuant to section 55(1.1) of the Act in the amount of **\$9,000.00**.

I find that the landlord has established a total monetary claim of **\$9,100.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security 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 **\$8,200.00**. 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.

### Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order as outlined 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 22, 2023

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Residential Tenancy Branch