



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Tenant's **CNR, CNC, MNDCT, LRE, LAT, AS, FFT**  
Landlord **OPR-DR, MNR-DR, MNDL, MNDCL, 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;
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 (10 Day Notice) issued on April 29, 2023;
2. To cancel a One Month Notice to End Tenancy for Cause, (One Month Notice) issued on
3. For compensation for my monetary loss or other money owed;
4. To suspend or set condition on the landlord's right to enter the rental unit;
5. To be authorized to change the locks;
6. To be allowed to assign or sublet the rental unit; and
7. To recover the cost of the filing fee.

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

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.

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 10 Day Notice and the One Month Notice.

I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. As I must determine whether the tenancy will continue first, I will, therefore, only consider the tenant's request to set aside the 10 Day Notice and the One Month Notice. The balance of the tenant's application is dismissed with leave to reapply; however, I note most of the other issues in the tenants' application are only relevant should the tenancy continue.

I must consider the landlord's application as it is related to the 10 Day Notice and the One Month Notice. Further, I must consider if the landlord is entitled to an order of possess and a monetary order for repayment of rent under section 55 of the Act.

However, I will not consider the landlord's claim for rent for July 2023, as rent is not due. Nor will I consider the landlord's request for payment of a pet damage deposit as that is not relevant if the tenancy should end. Should the landlord suffer a loss of rent for July 2023, they are at liberty to reapply for monetary compensation.

#### Issue to be Decided

Should the 10 Day Notice be cancelled?

Should the One Month Notice be cancelled?

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

#### Background and Evidence

The tenancy began on February 2, 2023. Rent in the amount of \$5,500.00 was payable on the first of each month. A security deposit of \$2,750.00 was paid by the tenants.

At the outset of the hearing the tenant first stated that they never received any 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. However, the tenant after reviewing their own documents confirmed one was received.

The tenant testified that in February and May 2023 they sent the landlord large etransfers of \$22,000.00 each; however, the landlord's bank rejected them because the amount was too high.

The tenant testified that the landlord has not received rent for April, May 2023; however, it is not their fault the landlord's bank reject their etransfers and they have not paid rent for June 2023

**The tenant submits in the Application**

Date notice was received: Apr 30, 2023

Notice delivery method: Attached to the door

Describe why you are disputing the notice:

Many attempts to pay the landlord rent and the landlord's bank refused EFT due to the amount.

The landlord testified that the tenant gave them cheques for April and May 2023 rent and the cheques were returned non-negotiable. The landlord stated that they did not receive any etransfer.

The tenant argued that they issued cheques to the landlord from their business account, and it was impossible to have been returned for insufficient funds as they have a \$250,000.00 credit limit. The tenant stated they are unsure why they were returned.

**Analysis**

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

*Section 26 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.*

*46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

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.

The tenant stated that in February and May 2023, they tried to send the landlord \$22,000.00 by etransfer; however, because the amount was so high it was rejected by the landlord's bank. I find if that was true, the tenant could have resent the etransfers in smaller amounts.

Further, I do not find the tenant credible as it is illogical to believe the tenants would send \$22,000.00 to the landlord in February 2023 and again in May 2023 for unpaid rent. The tenancy just began in February 2023 and in May 2023, they only owed \$11,000.00. This does not have the ring of truth.

Furthermore, the tenants issued the landlord cheques for April and May 2023, both in the amount of \$5,500.00 which is the issue before me. Both cheques were returned by the tenant's bank as nonnegotiable, they were both written on the tenant's company account. While I am not sure why the April 2023 rent was nonnegotiable; however, the cheque for May 2023 was returned on May 8, 2023, and the Item Return shows the account was closed.

I find the tenants have provided no proof whatsoever, that their rent was paid. I find the tenants breached the Act when they failed to pay rent. I find the Notice is valid. Therefore, I dismiss the tenants' application without leave to reapply.

As I have ended the tenancy for unpaid rent, I do not need to consider the merits of the One Month Notice.

As the tenants were not successful with their application the tenants are not entitled to recover the filing fee from the landlord.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession and a monetary order for unpaid rent, 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 means all occupants and subtenant must vacated the premises. 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 unpaid rent for April, May and June 2023, pursuant to section 55(1.1) of the Act in the amount of **\$16,500.00**.

I find that the landlord has established a total monetary claim of **\$16,600.00** 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 **\$2,750.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$13,850.00**.

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 tenants.

In this case, the landlord in their submission stated that they found out the tenants gave them false information relating to their prior tenancy as they were evicted for failure to pay rent. While this did not have any bearing on today's hearing; however, I find it appropriate to make the following caution to the tenants.

**The tenants are cautioned** that if they have developed a repeated pattern of failure to pay rent, they could be referred to the Compliance and Enforcement Unit, for investigation and could be subject of fines up to \$5,000.00 per day or other action could be taken.

Further, I find it appropriate in this matter to grant the landlord a substituted service order, as the tenancy is ending. The landlord is authorized to serve the tenants' by email any future application for dispute resolution. I have noted the tenants email address on the covering page of this decision.

Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession and a monetary order for unpaid rent.

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 26, 2023

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Residential Tenancy Branch