



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **CNR, MNDCT, OLC, FFT, OPR, MNRL-S, MNDCL-S, FFL**

### **Introduction**

This hearing was convened in response to applications by the tenants and the landlords.

The tenants' application is seeking orders as follows:

- To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on July 7, 2023;
- For compensation of a monetary loss or other money owed;
- For the landlord to comply with the Act, regulation, and/or tenancy agreement; and
- To recover the cost of filing this application.

The landlords' application is seeking orders as follows:

- For an order of possession based on unpaid rent;
- For a monetary order for unpaid rent;
- To retain the security deposit for unpaid rent;
- To retain the security deposit for a monetary loss or money owed; and
- To recover the cost of filing the application.

Both the tenants and landlord attended the hearing. As both parties were present, service was confirmed.

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 tenant 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 tenant's

request to set aside the Notice and to recover the filing fee at these proceedings. The balance of the tenant's application is dismissed, with leave to reapply. The landlord's application indicated several matters. As the landlord's Notice is directly related, I will consider it. The balance of the landlord's application is dismissed, with leave to reapply.

### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?  
Are the landlords entitled to an Order of Possession?  
Are the landlords entitled to a Monetary Order for unpaid rent?

### Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on December 1, 2022, with a monthly rent of \$2,200.00, due on first day of the month, with a security deposit in the amount of \$1,100.00.

The tenants acknowledged in their application that they received the Notice on July 10, 2023. The tenants stated that they did not pay the outstanding rent as noted in the Notice. The tenants confirmed they only paid \$1,100.00 for March, April, May, June, July, August, and September 2023 rent, for a total of \$7,700.00. The tenants submitted bank statements into evidence to confirm the monthly rent amount of \$1,100.00 was paid to the landlord for these months.

The tenants testified that at the start of the tenancy they were paying \$2,200.00 a month for rent. In March 2023 they started paying \$1,100.00 a month due to a verbal agreement they had with the landlord in February 2023, that rent was being reduced to \$1,100.00 a month starting March 2023.

The landlord testified that the tenants are owing \$1,100.00 for February, March, April, May, June, July, August, and September 2023 rent, for a total of \$8,800.00.

The landlord testified that there was never a verbal agreement with the tenants that rent was being reduced to \$1,100.00 a month starting March 2023.

For "use and occupancy" receipts were provided to the tenants for July, August, and September 2023 rent and were submitted into evidence by the landlord.

The landlord submitted an Interac e-Transfer receipt for February rent showing that \$1,100.00 was sent back to the tenant on February 2, 2023.

The landlord submitted Interac e-Transfer receipts for March, April, May, June, July, August, and September rent showing that the tenants paid \$1,100.00 a month for rent.

### Analysis

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act.

Both parties agreed that \$7,700.00 was the outstanding rent amount. The tenants provided a bank statement that \$2,200.00 was paid for February rent on February 2, 2023, at 7:59 p.m. The landlord provided a copy of an Interac e-Transfer receipt showing that on February 2, 2023, at 8:54 p.m. \$1,100.00 was sent back to the tenants. This confirms that the total amount owing would be \$8,800.00.

Section 14 of the Act states that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Both the landlords and tenants did not agree to amend the tenancy agreement with a new rent amount of \$1,100 per month starting March 2023.

I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the Act, effective two days after service on the tenants. 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 landlords are entitled to a Monetary Order for the unpaid rent in the amount of \$8,800.00 and \$100.00 to recover the cost for filing for the total amount of \$8,900.00.

I order that the landlords retain the security deposit of \$1,100.00 in partial satisfaction of the claim and I grant the landlords an order under section 55 of the Act for the balance due of \$7,800.00. 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 tenants' application is dismissed. The landlords are granted an Order of Possession and a Monetary Order as stated 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: September 21, 2023

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Residential Tenancy Branch