



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding PEININSULA PROPERTY MANAGEMENT and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      CNR, MNDCT, FFT, OPR-DR, MNR-DR, FFL

### **Introduction**

This hearing dealt with the Tenants' November 27, 2023, and the Landlords November 29, 2023, Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

The Tenants Applied For:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord Applied For:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

- I find that Landlord P.P.M. was served on November 28, 2023, in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Tenants provided copies of the Canada Post Customer Receipt containing the tracking numbers to confirm this service.
- I find that Tenant J.E.C. and Tenant S.A.C. were served on November 30, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after

registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

### Service of Evidence

- Based on the submissions before me, I find that the Tenants' evidence was served to the Landlord in accordance with section 88 of the Act.
- Based on the submissions before me, I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

### Issue(s) to be Decided

1. Are the Tenants entitled to a cancellation of the 10 Day Notice to End Tenancy for unpaid rent?
2. Are the Tenants entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?
3. Are the Tenants entitled to recover the filing fee?
4. Is the Landlord entitled to an Order of Possession based on the Notice?
5. Is the Landlord entitled to a Monetary Order for unpaid rent?
6. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

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

Evidence and testimony provided by the parties indicates that the one-year fixed term tenancy began on June 1, 2022, with a monthly rent of \$2,700.00 due on the first of each month. A deposit of \$1,350.00 was paid.

Tenant J.E.C. testified that when they found themselves in financial difficulties, they reached out to the Landlord on October 30, 2023, and requested consideration of a proposed temporary four month rent reduction and repayment plan to assist them in getting their finances back in order. He further testified that they had asked the Landlord to allow them to reduce their monthly rent for the period November 2023 to February 2024 from \$2,700.00 to \$900.00 and for the outstanding rent for the four reduced months to be repaid in equal installments in addition to their regular monthly rent from March to December 2024. A copy of an October 30, 2023, email was submitted by the Tenants as evidence.

Tenant J.E.C. indicated that on November 7, 2023, the Landlord agreed with the Tenants' proposal but only for November and December 2023 and with a shorter repayment schedule. He stated that the Landlord sent them a rent reduction and repayment addendum on November 10, 2023, to sign. He further stated that after reviewing the document he saw that the Landlord had made a calculation error on the document which would have resulted in the Landlord being shortchanged the amount to be repaid. Tenant J.E.C. testified that they made the necessary adjustments to the addendum as well as to the proposed repayment schedule, signed it and sent it back to the Landlord on November 16, 2023. According to Tenant J.E.C., the Tenants followed up their submission of the signed addendum with a request for the Landlord to consider three months of rent reduction rather than two. Copies of email exchanges between the Tenants and Landlord during the period November 7 and 16, 2023 were submitted by the Tenants as evidence.

Tenant J.E.C. indicated that there appeared to be miscommunication between the owners of the property and the property management company which created a stressful and confusing situation for them. According to Tenant J.E.C., they were shocked when the Landlord issued them a 10 Day Notice on November 20, 2023 by email during payment plan discussions and paid the Landlord \$900.00 on November 22, 2023 based on the understanding that at a rent reduction of at least November and December 2023 had been agreed to based on the on-going discussions with the Landlord to that point and that they were therefore complying with the Landlord's direction and paying the full amount required. Copies of a November 21, 2023, email sent to the Tenants by the Landlord requesting that they sign the original incorrect addendum and a cheque for \$900.00 issued by the Tenants on November 22, 2023, were submitted by the Tenants as evidence.

According to Tenant J.E.C., the tenants sent the Landlord an email on November 22, 2023, indicating that they understood that the owners had agreed to rent reduction for November and December 2023, but were confused by the insistence on them signing the incorrect addendum calculations as well as the issuing of the notice to end tenancy. He stated that the Landlord subsequently responded on November 22, 2023, and clarified what they had meant to use as the calculation numbers in the addendum. Copies of email exchanges between the parties in support of the Tenants' testimony were submitted.

The Landlord testified that a 10 Day Notice was issued to the Tenants on November 20, 2023, by email because the Tenant's failed to sign the addendum as drafted by the Landlord. She stated that the Landlord was not agreeable to the amendments the

Tenants had made and insisted that the Tenants sign the original addendum. She indicated that had the Tenants signed the agreement the notice would have been cancelled. She stated that because it was not, the Tenants owed \$2,700.00 at the time the Notice was issued rather than the \$900.00 that would have been owing had an agreement been reached.

### Analysis

#### **Are the Tenants entitled to a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent?**

Under section 46(4) of the *Act*, a tenant who receives a notice for unpaid rent must do one of the following within 5 days of receipt of the notice:

- pay the overdue rent, in which case the notice has no effect, or
- dispute the notice by making an application for dispute resolution.

Based on the method of service used by the Landlord, the Tenant's application for dispute resolution on November 27, 2023, is in compliance with the 5-day requirements under section 46(4) of the *Act*.

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Relying on the testimony of both parties, the evidence submitted and on a balance of probabilities, I find that an agreement in principle had been reached and that the parties were still in the process of finalizing a written agreement at the time the Landlord issued the 10 Day Notice. I find that the Tenants therefore, operating in good faith and on a genuine belief that they were acting in accordance with the spirit of the negotiations and the approval of the Landlord, paid the amount that was required for their November 2023 rent within 5 days of receiving the notice.

I hereby grant the Tenants' application to cancel the notice. The notice is of no force or effect and the tenancy continues until such time as it is ended in accordance with the *Act*.

#### **Are the Tenants entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?**

This issue was not heard.

For the above reasons, the Tenants' application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, with leave to reapply.

**Are the Tenants entitled to recover the filing fee?**

As the Tenants were successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

**Is the Landlord entitled to an Order of Possession based on the Notice?**

The Tenant's application to set aside the Landlord's notice to end tenancy is granted and the notice is cancelled, therefore the Landlord is not entitled to an Order of Possession based on the November 20, 2023, notice. The Landlord's application for an Order of Possession is dismissed without leave to apply.

**Is the Landlord entitled to a Monetary Order for unpaid rent?**

The Tenant's application to set aside the Landlord's notice to end tenancy is granted and the notice is cancelled, therefore the Landlord is not entitled to a Monetary Order for unpaid rent based on the November 20, 2023, notice. The Landlord's application for a Monetary Order is dismissed without leave to apply.

**Is the Landlord entitled to recover the filing fee?**

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

**Conclusion**

The Tenants' application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is granted.

I grant the Tenants a Monetary Order in the amount of **\$100.00** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a reimbursement of the filing fee under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$100.00</b>

The Tenants are provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Tenants' application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is granted. The notice is of no force or effect and the tenancy continues until such time as it is ended in accordance with the Act.

The Tenants' application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, with leave to reapply.

The Landlord's application for an Order of Possession under sections 46 and 55 of the Act is dismissed without leave to reapply.

The Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed without leave to reapply.

The Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

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: January 15, 2024

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Residential Tenancy Branch