



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

### Introduction

The Tenant sought an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) under the *Residential Tenancy Act* (the “Act”). By way of cross-application the Landlords sought an order of possession based on the Notice and a monetary order for unpaid rent and the cost of the application fee.

### Preliminary Issue: Names of Tenants

It should be noted that the Tenant included two additional applicant “tenants” in their application; however, neither of these two individuals appear in any written tenancy agreement, and the Tenant did not present sufficient evidence persuading me to find that these individuals are parties to these legal proceedings. The Landlords only named the Tenant as a respondent in their application. As such, the two additional individuals are not included on this decision or the corresponding orders.

### Issues

1. Is the Tenant entitled to an order cancelling the Notice?
2. If not, are the Landlords entitled to an order of possession?
3. Are the Landlords entitled to a monetary order?

### Background and Evidence

The tenancy began on February 1, 2024, as evidenced by a written Residential Tenancy Agreement—which the Tenant signed on February 1, 2024. The Tenant testified that they did not move into the property until March 2024, however. The monthly rent is \$2,500.00 and it is due on the first day of the month, also evidenced by the Residential Tenancy Agreement—again, which the Tenant signed. There was \$625.00 security deposit and a \$625.00 pet damage deposit both of which were required to be paid by February 1, 2024.

The Landlords served the Notice upon the Tenant on March 31, 2024. Service was executed by the Notice being attached to the door of the rental unit, in compliance with section 88(g) of the Act. A copy of the Notice was provided into evidence. The Notice indicates that the Tenant did not pay rent when it was due on March 1, 2024. And the Notice indicates that the Tenant had not paid either the security or the pet damage deposit when they were due and payable on February 1, 2024.

The Tenant testified that there was some sort of verbal agreement whereby the Landlords would expect and accept rent on the fifteenth day of the month. The Landlord disputed this version of the facts, and the Residential Tenancy Agreement would suggest there was never any expectation of payment on the fifteenth.

The Landlord testified that no rent was paid for March or May, and only some rent (\$1,750.00) was paid for April. The Tenant testified that she paid rent for April and “sent it all to the Landlord”. Apparently, an individual by the name of “Shawn” also paid \$1,500.00 in cash to the Landlord toward the rent. The Landlord disputed this, and I note that Shawn did not attend the hearing to testify that he paid this amount. Further, the Tenant argued that the Landlords “put all responsibility on me” to pay the rent, and that the Tenant had to find roommates or additional occupants to pay the rent.

### Analysis

Section 26 of the Act requires a tenant to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

The Landlords' evidence supports the Landlords' claim that the Tenant did not pay the rent of \$2,500.00 on March 1, 2024. A copy of the Residential Tenancy Agreement clearly and unequivocally supports the fact that the Tenant—who, it must be remembered, agreed to the tenancy agreement by signing it—was required to pay rent of \$2,500.00 on the first day of the month. Whether the Tenant *could* actually afford to pay rent on the first day of the month, with or without the assistance of roommates or others, does not void the Residential Tenancy Agreement and its terms.

Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52. As a result, the Tenant's application to cancel the Notice is dismissed without leave to reapply.

Based on the above findings, the Landlords are 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 by the Landlords upon the Tenant as soon as possible. The Tenant has seven (7) days to vacate the rental unit from the date of service or from the date of deemed service, whichever is sooner.

The Landlords are entitled to an order for unpaid rent under section 55(1.1) of the Act. They are also entitled to the cost of the application fee of \$100.00, pursuant to section 72 of the Act. Thus, pursuant to sections 26, 67, and 72 of the Act, the Tenant is ordered to pay \$4,562.86 to the Landlords.

(This total is calculated as follows: (1) March 2024 rent of \$2,500.00; (2) April 2024 balance of rent of \$730.00; (3) May 2024 rent (*pro rata* of \$82.19 for the period of May 1 to May 15) of \$1,232.86; and (4) \$100.00 application fee). Given that the tenancy is ending, however, I am not making any order that the Tenant pay the security or pet damage deposit to the Landlords.

A monetary order in the amount of \$4,562.86 is issued with this decision to the Landlords. The Landlords must, if they intend to enforce payment, serve a copy of the monetary order upon the Tenant as soon as possible.

### Conclusion

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

The Landlords' application is granted. The Landlords are granted an order of possession with an effective period of seven (7) days from the date of service.

The Landlords are granted a monetary order in the amount of \$4,562.86.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: May 14, 2024

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Residential Tenancy Branch