



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDCT

### Introduction

This hearing was scheduled to convene at 11:00 a.m. this date concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities, and for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement.

The landlord attended the hearing and gave affirmed testimony, however the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call. Therefore, I dismiss the tenants' application in its entirety without leave to reapply.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. In order to determine whether or not the landlord is entitled to an Order of Possession, I affirmed the landlord and heard his testimony.

### Issue(s) to be Decided

Having dismissed the tenants' application, the issue remaining to be decided is:

- has the landlord established that the tenants have failed to comply with the law with respect to the payment of rent?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on April 1, 2021, although the tenants were permitted to move in a day earlier. Rent in the amount of \$1,100.00 per month is payable on the last day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord resides in the upper level of the home.

The landlord further testified that he served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by emailing it and leaving a copy on the door of the rental unit. A copy has been provided by the tenants for this hearing. It is dated May 2, 2021 and contains an effective date of vacancy of May 11, 2021 for unpaid rent in the amount of \$1,100.00 that was due on April 30, 2021. The tenants paid the rent on May 6, 2021, but have not yet paid any rent for June, 2021, and the landlord requests an Order of Possession.

### Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent in full or dispute the Notice. If the tenant pays the rent in full within that 5 day period, the Notice is of no effect.

In this case, the landlord testified that the Notice was served by email and by posting it to the door of the rental unit on May 2, 2021, which is deemed to have been served 3 days later, or May 5, 2021. The landlord testified that rent was paid on May 6, 2021, which is within 5 days of service, and therefore, I find that the Notice is of no effect.

Although I am satisfied by the testimony of the landlord that the tenants have not complied with the law with respect to the payment of rent, I decline to grant an Order of Possession. If rent remains unpaid, the landlord is at liberty to serve another notice to end the tenancy.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

The landlord's request for an Order of Possession is not granted.

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 08, 2021

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Residential Tenancy Branch