



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

On September 12, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing, with G.J. attending as an agent for the Landlord. Both Tenants attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

G.J. advised that a Notice of Hearing package was only served to Tenant N.A. by email on November 3, 2022. N.A. confirmed that she permitted the Landlord to serve her with documents by email, and she acknowledged that she received this package. However, Tenant R.A. confirmed that he was never served a separate Notice of Hearing package, as required by Rule 3.1 of the Rules of Procedure (the “Rules”). Based on this undisputed evidence, I am satisfied that N.A. has been duly served the Landlord’s Notice of Hearing package. While R.A. was not served this package, as he was in attendance, I can reasonably conclude that he was aware of the claims against them, and the hearing would proceed against him as well.

G.J. advised that the Landlord's evidence was not served to the Tenants. As such, the Landlord's documentary evidence was excluded and will not be considered when rendering this Decision.

R.A. advised that their evidence was not served to the Landlord. However, the one piece of paper that they chose to rely on was already in the Landlord's possession. Regardless, as their evidence was not served to the Landlord in accordance with Rule 3.15 of the Rules, the Tenants' documentary evidence was also excluded, and will not be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 15, 2022, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on October 31, 2022. Rent was established at \$1,450.00 per month and was due on the first day of each month. A security deposit of \$725.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence for consideration. As the Tenants had already vacated the rental unit, the Landlord's request for an Order of Possession does not need to be considered.

All parties also agreed that the Tenants never provided a forwarding address in writing to the Landlord.

G.J. advised that the Landlord served the Notice by hand to R.A. on September 2, 2022. When she was asked if the Landlord had any proof of this service, or a witness, she consulted with the Landlord first, and then she replied that she witnessed him serve R.A. Given that she allegedly witnessed this service, it was not clear why she would have needed to consult with the Landlord before answering. She was asked about this unusual delay before answering this question, and she attributed it to being nervous.

Given that the Landlord did not serve their documentary evidence to the Tenants, and as it was necessary to view the Notice to determine if it was valid, the Landlord was permitted until the end of January 24, 2023, to upload a copy of this Notice.

R.A. advised that he was never served with this Notice. Alternately, he stated that the Landlord approached him in September 2022, and told him that if he has not moved by September 5, 2022, his property would be removed from the rental unit. He confirmed that they did not have any authority under the *Act* to withhold the rent, and he testified that he paid \$1,750.00 in rent and \$50.00 for "cleaning", in cash, to the Landlord on September 11, 2022. He stated that there was no written tenancy agreement, that the Landlord conducted business verbally, and that they had an agreement with the Landlord that extra occupants could stay in the rental unit for \$300.00 per month per occupant. He submitted that as of May 15, 2022, they had two cousins living with them in the rental unit, and that they were paying \$1,750.00 per month accordingly.

He then testified that they paid \$1,700.00 on October 1, 2022, for October 2022 rent, and he stated that they paid this much only as they allegedly paid an extra \$50.00 in September 2022.

G.J. testified that when R.A. was served the Notice, he stated that he would look it over and pass it to N.A. She advised that the Tenants did not pay the rent or dispute the Notice after receiving it. She stated that they did not have a copy of the Notice in front of them to refer to; however, she claimed that the Notice indicated that \$2,050.00 was owing for rent on September 1, 2022. As well, she claimed that there was a written tenancy agreement that was signed by the Tenants, and that there was an addendum which permitted the Landlord to charge an extra \$300.00 per month per occupant.

She confirmed that two extra occupants moved into the rental unit in mid-May 2022; however, the Tenants only paid \$1,750.00 per month for this from June 2022 onwards. As the Landlord did not want to escalate any issues, he only asked them for the extra \$300.00 per month verbally, but never in writing. As the Tenants continued only paying

\$1,750.00 per month, the Landlord finally served the Notice in September 2022, asking for the full \$2,050.00 that was owing.

She testified that the Tenants initially paid the rent by e-transfer, but requested in June 2022 to pay rent by cash. They were provided with receipts for such payments; however, no such documentary evidence was submitted to corroborate this. She stated that the Tenants did not pay any rent for September 2022, and that they paid \$1,750.00 for October 2022 rent.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent. Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies,

their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When assessing the Landlord's claims, I note that there was no documentary evidence to rely on, as their evidence was not served. The Landlord was provided with an opportunity to submit a copy of the Notice by the end of day on January 24, 2023, as this document was pertinent to the Application for non-payment of rent. However, this document was not submitted by the Landlord.

Moreover, when receiving testimony, I did not find the Landlord or G.J. to be particularly organized, prepared, or credible. Furthermore, the Tenants did not have any documentary evidence to rely on as their evidence was not served either. As well, when receiving testimony, I did not find either Tenant to be particularly credible. It appears as if both parties had little knowledge of their rights and responsibilities under the *Act*, and many of the problems during this tenancy stemmed from relying on verbal agreements instead of having any agreements documented in writing.

As the burden of proof is on the Landlord to substantiate their claims, I find that the Landlord did not prove, on a balance of probabilities, that the Tenants did not pay \$1,750.00 for September 2022 rent. However, based on the consistent testimony of the parties, it appeared as if there was a verbal agreement that the Tenants, pending approval from the Landlord, could have additional occupants stay in the rental unit at a cost of \$300.00 per month per occupant. Moreover, R.A. testified that two of their cousins had moved in on or around May 15, 2022. As such, I am satisfied that the Tenants owed the Landlord an additional **\$300.00** for September 2022 rent, and I grant the Landlord a monetary award in this amount.

With respect to October 2022 rent, I am satisfied from the consistent and undisputed evidence that the Tenants paid \$1,700.00 on October 1, 2022, for October 2022 rent. However, I do not accept that they were permitted to withhold \$50.00 from this rent as they claimed to have paid that additional \$50.00 in September 2022 for some other issue, and not for rent. As the Tenants had two additional occupants in the rental unit for October 2022, I again am satisfied that the Tenants owed the Landlord an additional \$300.00 for October 2022 rent. As the Tenants also owed an additional \$50.00 on October 1, 2022, I grant the Landlord a monetary award in the amount of **\$350.00** to rectify this matter.

As the Landlord was partially successful in this Application, I find that the Landlord is entitled to recover \$50.00 of the \$100.00 filing fee.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenants**

Item	Amount
Rental arrears for September 2022	\$300.00
Rental arrears for October 2022	\$350.00
Filing Fee	\$50.00
Security deposit	-\$725.00
<b>Total Monetary Award</b>	<b>\$25.00</b>

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$25.00** 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.

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 25, 2023

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Residential Tenancy Branch