



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing on May 3, 2012 was conducted via teleconference and was attended by the landlord and one of the tenants. The hearing was reconvened on May 29, 2012 via teleconference with both the landlord and the male tenant attending

These matters were originally adjudicated on June 20, 2011 through the direct request process with that decision and orders set aside through judicial review. The matters were then adjudicated through a participatory hearing held on September 30, 2011 with a decision written the same day. The decision of September 30, 2011 was also set aside through judicial review which results in this new hearing.

On April 5, 2012, the Residential Tenancy Branch (RTB) provided both parties with a copy of a Notice of Hearing letter. The letters were sent via facsimile to the landlord and to legal counsel for the tenants and by Canada Post to the landlord and to legal counsel for the tenants.

These letters confirmed to both parties the hearing time; call in procedures and notification that a new file was created and no evidence from the original file would be considered in this new hearing. The parties were advised that they must re-serve further evidence and any existing evidence and that they must serve this evidence in accordance with the RTB Rules of Procedure.

In addition the landlord provided a sworn affidavit from a local bailiff confirming that she served the female tenant with the notice of hearing; the factsheet; and a copy of the Application for Dispute Resolution on Saturday April 14, 2012 at 1:22 p.m. and the same material to the male tenant on Saturday April 14, 2012 at 1:23 p.m.

Based on the above, I find both parties have been made sufficiently aware of this hearing on May 3, 2012 directly from the RTB and in addition I find the landlord has taken additional steps to ensure the tenants were sufficiently served and in accordance with Section 59 of the *Residential Tenancy Act (Act)*.

At the May 3, 2012 hearing the landlord had provided no evidence to support his claim. However, after the initial judicial review granted a new hearing the parties had been

advised that there was no need to submit additional evidence but rather the existing file and evidence would be considered. After the second judicial review and in preparation for this hearing the parties were advised that they both were required to provide all evidence they intended to rely upon.

I accept that despite similar circumstances leading to the preparation of both hearings granted through judicial review the RTB provided distinctly different instructions on the use and service of evidence and as a result I accept the landlord was uncertain how to proceed.

As a result, I adjourned the hearing to a May 29, 2012 and advised both parties to submit the evidence they intended to rely upon in the hearing. I note the landlord provided substantial documentary evidence and the tenant provided no evidence at all.

Section 59 of the *Residential Tenancy Act (Act)* provides the requirement on the party filing an application for dispute resolution to provide a copy of the application within 3 days of making it. There is no other requirement under the *Act* stipulating time frames for the service of evidentiary or notice of hearing documents.

The Residential Tenancy Rule of Procedure #3.5 provides deadlines to parties regarding the service of evidence that was not originally submitted with the Application of 5 days prior to the hearing. There is no provision in terms of a deadline for providing a copy of a notice of hearing document that provides the date; time; and call in procedures.

During the original hearing, I advised both parties verbally of the new date and time for the reconvened teleconference hearing, including the ability to use the same call in codes as the first hearing but that I would ensure that each party was provided with a notice of reconvened hearing directly from the RTB.

The tenant testified that he did not obtain the actual written notice of the reconvened hearing until Saturday May 26, 2012, however, I have confirmed that the notice had been mailed to his legal counsel's office (at the tenant's instruction) on May 4, 2012. The tenant confirmed that I had provided both parties with the date; time and call in procedures verbally on May 3, 2012.

The tenant's legal counsel did not attend this hearing or provide any written statements as to when legal counsel received the notice. The tenant testified that his legal counsel was recovering for surgery and not available for this hearing. The tenant's legal counsel did not attend the hearing of May 3, 2012.

The landlord testified that he served his evidence to the tenant's legal counsel (at the tenant's instruction) on May 10, 2012. The tenant does not dispute this and agrees that he has had the landlord's evidence for sufficient time.

As I informed the parties verbally on May 3, 2012 of the reconvened hearing time; date; and call in procedures; the tenant acknowledged receipt of the landlord's evidence well in advance of the May 29, 2012 hearing; and the tenant has provided no evidence or corroborating testimony that his legal counsel did not receive the notice of reconvened hearing, I find the tenants were sufficiently served with evidence and notice of this hearing.

I also find that even if the tenant were able to substantiate his claim that he did not receive the *written* notice of the reconvened hearing as this matter has been the subject of two previous hearings and two previous judicial reviews, I find there is no prejudice to the tenant to proceed with the hearing as he should be well prepared to present his response to the landlord's claim. For these reasons, the hearing proceeded and no further adjournment was granted.

In the landlord's submission he notes, in addition to the unpaid rent, additional expenses related to issues arising from dealing with the tenants in relation to these matters. As this hearing was convened to deal with the matters solely in the landlord's original Application I accept only amendments to the Application as to the quantum of rent owed and possession.

The parties confirmed at the start of the hearing that the tenants no longer live at the dispute address and as such there is no longer a need for the order of possession. I amend the landlord's Application to exclude matters of possession.

I also amend the landlord's Application to include amounts of unpaid rent for the months from July to October 2011 in addition to the landlord's initial claim of unpaid rent for the month of June 2011.

#### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent, pursuant to Sections 67, and 72 of the *Act*.

#### Background and Evidence

The landlord provided into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on October 1, 2010 for a month to month tenancy with a monthly rent of \$1,500.00 due on the 1<sup>st</sup> of each month with a security deposit of \$750.00 paid on September 22, 2010 and a pet damage deposit of \$600.00 paid on September 30, 2010; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on June 3, 2011 with an effective vacancy date of June 13, 2011 due to unpaid rent in the amount of \$1,500.00 due on June 1, 2011.

The landlord testified that the tenants usually paid their rent by cheque and that they stopped paying in June; he then issued the 10 Day Notice To End Tenancy for Unpaid Rent and the tenants made no further attempt to pay rent for the duration of their occupancy.

The tenant testified that they had found out in April 2011 that there were other people using the residential property that they believed they were entitled to be using and as a result his insurance company would be cancelling their insurance.

The tenant testified that he obtained legal advice that because this issue had to deal with his right to quiet enjoyment he must work it out with the landlord, after speaking to the landlord about it and the landlord's failure to deal with the matter the tenant stopped paying rent.

The tenant confirmed that he did not seek to obtain an order to have the landlord comply with the *Act* or for any compensation for the loss of quiet enjoyment but rather he simply did not pay rent for the months of June, July, August, September, and October 2011.

The tenants provided no documentary evidence regarding the circumstances that led to their decision to stop paying rent, such as correspondence from his insurance company or local building or bylaw inspectors.

### Analysis

Section 26 of the *Act* states tenants must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulations or the tenancy agreement, unless the tenants have a right under the *Act* to deduct all or a portion of the rent.

The *Act* allows tenants to deduct specific items such as the cost of emergency repairs (after following prescribed steps); for an overpayment of rent; or compensation for receipt of a notice to end a tenancy for landlord's use of the property. In the case of items not specifically addressed under the *Act* a tenant may deduct from rent amounts as order by the Director, as obtained through an Application for Dispute Resolution.

As per the tenant's own testimony and in the absence of any evidence that the tenants had authority under the *Act* to deduct any monies from their rental payments, I find the tenants did not pay the rent for the months of June, July, August, September, and October 2011, contrary to their obligations under Section 26.

### Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$7,500** comprised of rent owed.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 30, 2012.

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Residential Tenancy Branch