



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capreit  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by an agent for the landlord and the tenant.

The landlord provided documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 30, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed.

Based on the landlord's documentary evidence, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on June 24, 2011 for a 1 year fixed term tenancy beginning on July 1, 2011 for the monthly rent of \$850.00 with a security deposit of \$425.00 paid. While the tenancy agreement did not stipulate what day of the month rent was due, the landlord testified rent was due on the 1<sup>st</sup> of each month. The tenant did not dispute this statement. The tenancy agreement also stipulated the landlord would

charge a fee of \$25.00 for parking; \$25.00 as an “NSF” fee; and \$25.00 as a late payment fee. The landlord also testified rent had increased to \$963.98 during the course of the tenancy and that the tenant had actually paid a security deposit of \$425.00 (USD) (\$399.93 CAD) and a pet damage deposit of \$425.00 (USD) (\$408.00 CAD);

- A copy of a parking agreement dated September 1, 2013 signed only by the landlord’s agent for parking fee of \$30.00 in exchange for parking of one vehicle;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 4, 2015 with an effective vacancy date of September 19, 2015 due to \$993.98 in unpaid rent. I note the unpaid rent portion was \$963.98 plus \$30.00 parking;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on October 7, 2015 with an effective vacancy date of October 17, 2015 due to \$993.98 in unpaid rent. I note the unpaid rent portion was \$963.98 plus \$30.00 parking; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on November 6, 2015 with an effective vacancy date of November 7, 2015 due to \$2,087.96 in unpaid rent. I note the unpaid rent portion is \$1,927.96 plus \$60.00 parking and \$50.00 late payment fee; \$50.00 NSF fee.

The landlord submitted the tenant failed to pay the full rent owed for the month of September 2015 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on September 4, 2015. The tenant testified that he did not receive the landlord’s Notice until 2 or 3 weeks later. When pressed to be more specific the tenant testified he received on September 19, 2015.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

The tenant testified that he had spoken with the landlord’s agent prior to September 1, 2015 and advised her that he was having money wired into his account from the United States and that it would take 16 – 21 days to clear. He stated the landlord told him that if he did not pay his rent on time she would be required to issue a 10 Day Notice to End Tenancy for Unpaid Rent, simply as a formality, but that if he paid the rent by the end of September she would not pursue ending the tenancy.

The landlord’s agent agreed that she had spoken with the tenant and agreed that if he paid the rent by September 20, 2015 she would not pursue the eviction notice and allow the tenancy to continue. The parties agreed the tenant paid the landlord \$993.98 on September 30, 2015.

The tenant pointed out that the receipt issued by the landlord on September 30, 2015 for use and occupancy only was in the amount of \$903.98 despite his payment being

\$993.98. The landlord confirmed that the receipt was in error and should have read \$993.98.

The tenant submits that he agrees that he is responsible for the payment of parking but he had not noticed the landlord had increased the amount from \$25.00 to \$30.00. The landlord testified that the tenant was notified by phone that his parking would increase but they did not have him sign the updated parking agreement that was submitted into evidence. The landlord also submitted that regardless the tenant has been paying the higher rate for 2 years and as such he should be considered to have accepted the increase.

The landlord has submitted into evidence a tenant ledger that records that as of November 4, 2015 the tenant owed the landlord at total of \$2,087.96 broken down as follows: Rent - \$1,927.96 (October and November 2015); Parking \$60.00 (October and November 2015); \$75.00 "NSF" fees (September, October, and November 2015); and \$25.00 late rent payment fee (October 2015).

I note the landlord has provided no evidence that the tenant's cheques and/or payments were returned by the tenant's financial institution.

In regard to the amount of the security and pet damage deposit the landlord submitted that the tenant had paid the requested \$425.00 for each deposit in US funds and as such the landlord has recorded the Canadian equivalent amounts based on the conversion rates at the time the deposits were paid – these rates were not provided.

The landlord submitted that the tenant paid the security deposit at the start of the tenancy and the pet damage deposit later but she could not provide a specific date or evidence to confirm that the deposits were paid on separate dates. The tenant submitted that he paid both deposits the same date. The tenant also submitted that the landlord should not calculate the Canadian value of the deposits on the dates they were paid but rather the current rates.

I note the tenancy agreement originally had a clause stating that the tenant could not have pets unless he had written approval from the landlord but that this clause was crossed out.

### Analysis

I have reviewed all documentary evidence and testimony and accept that the tenant has been served with notice to end tenancy on September 4, 2015 as declared by the landlord. In the absence of any evidence to the contrary I also accept the tenant's testimony that he received the Notice on September 19, 2015.

However, based on the testimony of both parties I accept the landlord had informed the tenant that she would not be pursuing the end of the tenancy if the tenant paid the rent within the month of September 2015.

When both parties to a dispute provide equally plausible interpretations of a term of a verbal agreement, the party with the burden of proof must provide additional evidence to corroborate their claim. In the case before me, I find the landlord seeks an order of possession based on a 10 Day Notice for Unpaid Rent issued after the parties made a verbal agreement the tenant could pay the rent late.

The landlord submitted that she had agreed to allow the tenant until September 20, 2015 to pay the outstanding rent and the tenant submits they had agreed he would have until the end of September 2015. As noted above, this was a verbal agreement and no documentary record was made of the agreement or its terms.

As such, in the absence of any corroborating evidence such as a written agreement or some form of notation on the tenant ledger or file, I find the landlord has failed to establish that the deadline to pay September 2015 rent was earlier than September 30, 2015.

Therefore, I find the tenant paid the landlord rent for the month of September 2015 in accordance with their verbal agreement and the landlord cannot pursue the end of the tenancy based on the 10 Day Notice to End Tenancy issued on September 4, 2015. I find this Notice is not enforceable.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

In regard to the 10 Day Notices to End Tenancy for Unpaid Rent issued on October 7, 2015 and November 6, 2015, I find the landlord, by advising the tenant prior to the issuance of the September 4, 2015 Notice to End Tenancy that the issuance of such notices was simply a formality, created an environment where the tenant could expect that the landlord does not pursue ending tenancies when they issue such a Notice.

Based on this I find the landlord is being inconsistent in how she chooses to enforce a 10 Day Notice to End Tenancy. As such, I find it reasonable that the tenant would not feel it was necessary to file an Application to dispute any one of the three Notices issued to the tenant.

Therefore, I find the landlord is estopped from pursuing an end to this tenancy based on the issuance of a 10 Day Notice until the landlord has provided a clear written statement of the landlord's intent to pursue the end of the tenancy based on such a notice.

As a result, I find that the Notices issued on both October 7, 2015 and November 6, 2015 are also not enforceable.

However, I caution the tenant that pursuant to Section 26 of the *Act*, the tenant does not have authority to withhold any rent payment from the landlord and he must pay rent

when it is due and that the landlord may seek to end the tenancy pursuant to a 10 Day Notice for Unpaid Rent if the landlord provides written notification as noted above. I also caution the tenant the landlord may end a tenancy for the repeated late payment of rent under Section 47 of the *Act* even if rent has been paid in full.

For the reasons noted above I dismiss the portion of the landlord's Application for Dispute Resolution seeking an order of possession.

In relation to the landlord's monetary claim I accept, based on the testimony of both parties, that at the time of the hearing the tenant owed the landlord \$1,927.96 in unpaid rent.

I also find that the original tenancy agreement stipulates that the tenant would be charged \$25.00 for parking and that the tenancy agreement itself was not amended to change the amount of parking. In addition, despite the landlord's submission of a parking agreement that it was not signed by the tenant acknowledging the increase in parking fees and the absence of any other form of written notification of a parking fee increase, I find this unilateral increase is not enforceable. Therefore, I find the landlord is entitled to \$50.00 for unpaid parking fees.

I find the landlord has provided no evidence that the tenant's cheques and/or payments were returned by a financial institution. As such, I find the landlord has failed to establish entitlement to "NSF" fees. However, based on the testimony of both parties I accept that the landlord is entitled to a late payment fee of \$25.00 for the month of October 2015 as shown on the tenant ledger.

As to the amount of the Canadian value of the security and pet damage deposits, I find the landlord cannot establish the tenant paid these deposits at different times. I also find, on a balance of probabilities, since the no pet clause was struck out in the tenancy agreement the landlord had agreed to allow the tenant to have pets from the start of the tenancy.

As a landlord can only request a pet damage deposit at the start of the tenancy or during the tenancy when a tenant obtains a pet I find the only time the landlord would have collected the pet deposit was at the start of the tenancy and the value of those deposits should be equal.

In the absence of the provision of the conversion rates used by the landlord or where they were obtained from I have determined the USD to CAD conversion rate, according the Bank of Canada website on June 24, 2011 was 0.9870. I therefore find, the Canadian value of the security deposit was \$419.48 and of the pet damage deposit was \$419.48.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,027.96** comprised of \$1,927.96 rent owed; \$50.00 parking fees owed; \$25.00 late payment fees owed; and \$25.00 of the \$50.00 fee paid by the landlord for this application as they were only partially successful.

I order the landlord may deduct the security deposit and pet damage deposit held in the amount of \$838.96 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,189.00**. This order must be served on the tenant. If the tenant fails 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: November 27, 2015

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Residential Tenancy Branch

