



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and for breach of an agreement, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 27 minutes. The landlord and her advocate JP attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenant was served with the landlord's dispute resolution hearing notice and application ("Application") on February 2, 2016, by way of registered mail. The landlord's advocate provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on February 7, 2016, five days after its registered mailing.

The landlord confirmed that she did not serve her written evidence package upon the tenant with her Application or prior to this hearing. She said that she did not give the tenant a copy of the tenancy agreement at any time during this tenancy because the tenant did not sign it. She said that she already served the 10 Day Notice on the tenant so she did not serve another copy with her Application. Accordingly, I cannot consider the landlord's tenancy agreement or addendum conditions to the tenancy agreement, at

this hearing as it has never been served on the tenant, and it is required to be served as per Rule 3.1 of the Residential Tenancy Branch *Rules of Procedure*.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated December 3, 2015 ("10 Day Notice") on the same date by way of posting to her rental unit door. She stated that someone witnessed this service but was unable to testify at this hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice pm December 6, 2015, three days after its posting.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim from \$1,475.00 to \$2,550.00 to include all unpaid rent to date. I find that the tenant is aware that rent is due on the first day of each month as per her tenancy agreement. The tenant continues to reside in the rental unit.

Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claims for increased rent, despite the fact that she did not attend this hearing.

At the outset of this hearing, the landlord confirmed the correct spelling of the tenant's surname, as it was spelled differently on the tenancy agreement and the 10 Day Notice. The correct spelling is reflected on the front page of this decision and the monetary order.

#### Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

#### Background and Evidence

While I have turned my mind to the testimony of the landlord and her advocate, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord confirmed that this month-to-month tenancy began on September 15, 2015 and that monthly rent of \$650.00 is payable on the first day of each month. She stated that a security deposit of \$325.00 was due and that the tenant paid \$305.00 initially and the remaining \$20.00 recently, although she could not recall the exact date. The landlord confirmed that she continues to retain this deposit. She explained that a pet damage deposit of \$300.00 was due but that it had not been paid by the tenant, despite the fact that the tenant has pets. She said that the tenant continues to reside in the rental unit.

The landlord seeks an order of possession based on the 10 Day Notice. The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,175.00 was due on December 1, 2015. The notice indicates an effective move-out date of December 13, 2015.

The landlord seeks a monetary order of \$2,550.00 for unpaid rent from December 2015 to March 2016 as well as a pet damage deposit of \$300.00. The landlord also seeks to recover the \$100.00 filing fee paid for her Application.

### Analysis

Section 46(1) of the *Act* states that the landlord may only end a tenancy if rent is unpaid on any day after the day it is due. This means that the landlord may only issue a 10 Day Notice for valid reasons.

I find that the landlord was unable to explain the amount on the 10 Day Notice of \$1,175.00. The landlord said that \$650.00 was for unpaid December 2015 rent, \$300.00 was for the unpaid pet deposit, \$20.00 was for the unpaid portion of the security deposit and \$25.00 was for unpaid October 2015 rent. The landlord was unable to explain the remaining amounts. I find that by issuing a notice indicating amounts for rent, as well as the security and pet deposits, and being unable to explain the remainder amounts, the tenant was not provided with proper notice of the correct amount of rent due. For the above reasons and on a balance of probabilities, I find that the landlord issued an invalid 10 Day Notice to the tenant.

Therefore, I find that the tenant did not have proper notice of the correct amount of rent due, such that she could pay the correct amount owed to the landlord or file an application to dispute the actual amount owing, within five days of deemed receipt.

Accordingly, I find that the landlord's 10 Day Notice, dated December 3, 2015, is invalid. The landlord's 10 Day Notice, dated December 3, 2015, is cancelled and of no force or effect. The landlord's application for an order of possession for unpaid rent based on the 10 Day Notice, dated December 3, 2015, is dismissed without leave to reapply.

I dismiss the landlord's claim for an order of possession for breach of an agreement. I find that the landlord did not provide clear evidence regarding the agreement that the tenant breached. The landlord said that the tenant smoked marijuana on the property, had pets without notice to the landlord, and had an extra occupant living on the property. The landlord did not issue a 1 Month Notice to End Tenancy for Cause to the tenant for failure to pay the pet damage deposit within 30 days, for illegal activity or for an unreasonable amount of occupants. The landlord did not provide a written agreement that the tenant breached. As mentioned earlier in this decision, I cannot consider the tenancy agreement or the addendum conditions because the tenant was not served with it. In any event, the tenant did not sign this tenancy agreement or addendum.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord seeks a monetary order of \$2,250.00 for unpaid rent. The landlord seeks \$300.00 for unpaid December 2015 rent, as she said the tenant paid \$350.00 for rent on December 25, 2015. The landlord also seeks \$650.00 for each month from January to March 2016. Based on the landlord's undisputed testimony, I find that the landlord is entitled to \$2,250.00 in rental arrears from December 2015 to March 2016.

I dismiss the landlord's claim for an unpaid pet damage deposit of \$300.00. The landlord did not apply for a monetary order for damage or loss, only for unpaid rent. I find that she did not provide notice to the tenant that she was seeking this amount at this hearing, such that the tenant could provide a response.

As the landlord was mainly unsuccessful in this hearing, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this Application from the tenant. The landlord must bear the cost of the filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,250.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The landlord's Application for an order of possession based on the 10 Day Notice, dated December 3, 2015, is dismissed without leave to reapply. The landlord's 10 Day Notice, dated December 3, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As this tenancy is continuing, I dismiss the landlord's application to retain the tenant's security deposit, as it is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

The landlord's application to obtain a monetary order of \$300.00 for the pet damage deposit is dismissed with leave to reapply.

The landlord's Application to recover the \$100.00 filing fee is dismissed without leave to reapply.

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: March 14, 2016

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Residential Tenancy Branch

