



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR MNR FF – Landlords' application  
CNR – Tenant's application

### Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by the Landlord and the Tenant.

The Landlord's application was filed on September 26, 2016 listing one applicant landlord and one respondent tenant. The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent and to recover the filing fee.

The Tenant's application was filed on September 12, 2016 listing one applicant tenant and two respondent landlords. The Tenant filed seeking an Order to cancel a 10 Day Notice to end tenancy for unpaid rent.

The hearing was conducted via teleconference and was attended by one Landlord. The Landlord provided affirmed testimony that she did not serve the Tenant with copies of her application for Dispute Resolution and notice of hearing documents. The Landlord confirmed receipt of the Tenant's application for Dispute Resolution and notice of hearing documents.

No one was in attendance on behalf of the Tenant despite this hearing being convened to hear the matters pertaining to the Tenant's application for Dispute Resolution.

### Issue(s) to be Decided

1. Should the Landlord's application for Dispute Resolution be dismissed with without leave to reapply?
2. Should the Landlord's application for Dispute Resolution be dismissed with without leave to reapply?
3. Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord testified she entered into a verbal tenancy agreement with the Tenant. The Tenant took possession of the rental unit as of approximately June 23, 2016. Rent of \$550.00 was payable on or before the first of each month and on June 23, 2016 the Tenant paid \$275.00 as the security deposit.

The Landlord submitted that when the Tenant failed to pay her September 2016 rent the Landlord served the Tenant a 10 Day Notice to end tenancy when she placed the notice in the Tenant's mailbox on September 4, 2016. A copy of that Notice was submitted into evidence by the Tenant listing \$550.00 as the amount of unpaid rent that was due September 1, 2016 and an effective date of September 14, 2016.

The Landlord stated the Tenant still has possession of the rental unit and has not paid any rent for September, October, or November 2016.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

#### **Landlord's application**

From her own submission the Landlord failed to serve the Tenant with copies of her application and notice of hearing documents as required by section 89 of the *Act*. Therefore, I find there to be insufficient evidence to prove the Tenant was sufficiently served with Notice of this proceeding.

To find in favour of an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of the Landlord's application and hearing documents not to have been effected in accordance with section 89 of the *Act*, I dismiss the Landlord's claim, with leave to reapply.

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

#### **Tenant's application**

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for twelve minutes and no one on behalf of the applicant Tenant called into the hearing during this time.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing.** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of any oral submissions from the applicant Tenant I find the Tenant failed to prove the merits of her application. Accordingly, I accept the undisputed evidence of the Landlord and order the Tenant's application dismissed without liberty to reapply.

Section 55(1) of the *Act* stipulates if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the 10 Day Notice to end tenancy issued September 3, 2016 I find that Notice complies with section 52 of the *Act*. Accordingly, I grant the Landlord an Order of Possession pursuant to section 55(1) of the *Act*.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event the Tenant does not comply with this Order it may be enforced through Supreme Court.

### Conclusion

The Landlord's application was dismissed with leave to reapply. The Tenant's application was dismissed, without leave to reapply and the Landlord was issued an Order of Possession.

This decision is final, legally binding, and 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 03, 2016

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Residential Tenancy Branch

