



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR FF – Landlord's application  
                             CNR FF – Tenant's application

### Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following in the details of the dispute:

*Tenant has failed to pay rent for July, Aug, Sept, Oct, which was agreed on verbally to be paid every month. Consideration of October and November loss of rent due to procedure will be added on \$800 every month*

[Reproduced as written]

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy in October and November, which is after the effective date of the 10 Day Notice.

Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

### Introduction

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

The Landlord filed their application on October 3, 2016 seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and/or utilities and to recover the cost of the filing fee; and money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement as amended above.

The Tenant filed on September 28, 2016 seeking an order to cancel a 10 Day Notice to end tenancy for unpaid rent and to recover the cost of his filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would

proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Is there sufficient evidence to uphold the 10 Day Notice to end tenancy (the Notice) issued September 24, 2016?
2. If so, is the Landlord entitled to an Order of Possession?
3. Has the Landlord proven entitlement to monetary compensation?

#### Background and Evidence

The parties entered into a verbal tenancy agreement which began on November 1, 2015. Rent of \$800.00 was required to be paid on or before the first of each month. On or before November 1, 2015 the Tenant paid \$400.00 as the security deposit.

When the Tenant failed to pay his July, August, and September 2016 rents the Landlord personally served the Tenant with a Notice to End Tenancy on September 25, 2016. The Notice listed \$2,400.00 as the unpaid rent amount and an effective date of October 4, 2016.

The Tenant testified and confirmed that he continues to reside in the rental unit and he has not paid rent for the past five months (July through to November 2016).

The Landlord testified she wished to proceed with her application for an Order of Possession and Monetary Order for unpaid rent up to November 30, 2016 in the amount of \$4,000.00 (5 x \$800.00).

#### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7(2) of the *Act* stipulates that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on September 25, 2016 and the effective date of the Notice would automatically correct to **October 5, 2016**. The Tenant neither paid the rent in full nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **October 5, 2016**. Accordingly, I grant the Landlord's request and issue them an Order of Possession effective 2 Days upon service to the Tenant. In the event the Tenant does not comply with this Order it may be enforced through Supreme Court.

Section 26 of the Act stipulates, in part, that a tenant must pay rent in accordance with the tenancy agreement (verbal or written); despite any disagreements the tenant may have with their landlord.

The undisputed evidence was the Tenant has not paid the \$2,400.00 rent owed for July, August and September 2016, in accordance with section 26 of the *Act*. As per the aforementioned, I find the Landlord has met the burden of proof and I award them unpaid rent for July, August, and September 2016 in the amount of **\$2,400.00**.

As noted above, this tenancy ended **October 5, 2016**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money use and occupancy of the rental unit and any loss of rent for October and November 2016, not rent. I approve the Landlords' requests to consider awarding them compensation for October and November 2016 given the delay from the time the Landlords filed their application on October 3, 2016 to the November 23, 2016 hearing date.

The Tenant continues to occupy the rental unit and the Landlord will not regain possession of the rental unit until after service of the Order of Possession. Once the Landlord regains possession they are required to mitigate there losses by trying to re-rent the unit for as soon as possible, pursuant to section 7(2) of the *Act*, as listed above. Therefore, I conclude the Landlord is entitled to payment for use and occupancy and any loss of rent for the full months of October and November 2016 in the amount of **\$1,600.00** (\$800.00 x 2).

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has been successful with their application; therefore I award recovery of the **\$100.00** filing fee

The Tenant is hereby ordered to pay the Landlord the awarded amount of \$4,100.00 (\$2,400.00 + \$1,600.00 + \$100.00) forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$4,100.00** which may be enforced through Small Claims Court upon service to the Tenant.

Having found in favor of the Landlord's application above, I conclude the Tenant's application to be meritless. As such, the Tenant's application is dismissed in its entirety, without leave to reapply.

### Conclusion

The Landlord was successful with their application and was awarded an Order of Possession effective 2 days upon service and a Monetary Order in the amount of **\$4,100.00**.

The the Tenant's application was dismissed in its entirety, without leave to reapply.

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 23, 2016

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Residential Tenancy Branch