



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR MNSD FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on October 14, 2016. The Tenant filed seeking an order to cancel 10 Day Notices to end tenancy for unpaid rent; for the return of her security deposit; and to recover the cost of her filing fee.

In the Details of the Dispute the Tenant wrote as follows:

*Recieved 3 eviction notices*

*Aug – already in dispute file 3 [file number]*

*Sept – Landlord was refused to answer door. On 3 separate*

*[Reproduced as written excluding file number as written on the front page of this Decision]*

The hearing was conducted via teleconference and was attended by the Landlords; their legal counsel (Counsel); the Tenant, and the Tenant's Witness. The Landlords and Tenant 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.

Each party confirmed receipt of the evidence submitted by the other party. No issues regarding service or receipt were raised by either party.

### Issue(s) to be Decided

- 1) Is this matter significantly linked to a matter that is currently before Supreme Court?
- 2) If so, should this matter proceed as scheduled for December 7, 2016?

### Background and Evidence

As per the tenancy agreement submitted into documentary evidence, the parties entered into a month to month tenancy agreement which commenced on April 20, 2011.

Rent of \$1,500.00 was payable on the first of each month. On May 1, 2011 the Tenant paid \$750.00 as the security deposit.

On August 24, 2016 the male Landlord filed an application for Direct Request seeking an Order of Possession and Monetary Order for unpaid rent. The file number for this application is listed on the front page of this Decision below the names of the participants who attended the December 7, 2016 hearing.

On August 31, 2016 the Adjudicator granted the Landlord's application issuing an Order of Possession and a Monetary Order of \$1,400.00 for August 2016 unpaid rent.

On September 6, 2016 the Tenant filed an Application for Review Consideration regarding the August 31, 2016 Direct Request Decision and Orders.

On September 20, 2016 an Arbitrator dismissed the Tenant's Application for Review Consideration finding that her Application for Review Consideration had been filed late.

On October 7, 2016 the Arbitrator re-opened her September 20, 2016 Review Consideration Decision and reconsidered the matters and evidence before her. As a result, the Arbitrator granted a New Hearing upon Review (a Review Hearing). The Review Hearing was scheduled to be heard on November 30, 2016.

On October 14, 2016 the Tenant filed her application for Dispute Resolution to dispute three 10 Day Notices issued for unpaid rent all signed and dated October 7, 2016; a request for the return of her security deposit in an amount of \$2,070.00; and to recover her filing fee. This is the matter that was scheduled to be heard by me during the hearing on December 7, 2016.

On November 30, 2016 a different Arbitrator conducted the Review Hearing. That Arbitrator issued his Decision on November 30, 2016 granting the Landlord an Order of Possession for unpaid rent and a \$1,400.00 Monetary Order for August 2016 unpaid rent. The Arbitrator indicated in his Decision that the effective date of the 10 Day Notice before him was August 18, 2016.

During the December 7, 2016 hearing the parties confirmed that the matters involving the Order(s) of Possession and Monetary Orders for unpaid August 2016 rent issued August 31, 2016 and November 30, 2016 were the subject of a Judicial Review. That Judicial Review is scheduled to be heard at Supreme Court on January 3, 2017.

The Tenant asserted that her October 14, 2016 application was filed seeking a Monetary Order for an overpayment of rent. Upon review of the application for Dispute Resolution filed by the Tenant and the information she wrote in the Details of Dispute on that application, there was no indication the Tenant was seeking a Monetary Order for an overpayment of rent.

Counsel submitted that the matters regarding the Tenant's October 14, 2016 application were not significantly linked to the Judicial Review currently before Supreme Court as the current matters relate to non-payment of rent for September and October 2016 and not August 2016 nonpayment of rent. As such, Counsel requested that the Landlord be granted an Order of Possession based on the 10 Day Notices issued in October 2016 and a Monetary Order for September and October 2016 unpaid rent.

### Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*; Residential Tenancy Policy Guideline (Policy Guideline) and the Residential Tenancy Branch Rules of Procedure (Rules of Procedure), stipulate provisions that I find relate to these matters as follows:

Section 59(2) of the *Act* stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

Section 59(5)(c) of the *Act* stipulates that the director may refuse to accept an application for dispute resolution if the application does not comply with subsection (2).

Rule of Procedure 4.1 provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added].

Section 58(2)(c) of the *Act* stipulates that if the director receives an application the director must determine the dispute unless the dispute is linked substantially to a matter that is before the Supreme Court.

Policy Guideline 11 provides that as a general rule it may be stated that the giving of a second Notice to End Tenancy does not operate as a waiver of a Notice already given.

Section 72(2)(b) of the *Act* authorizes a landlord to deduct any amount the director orders a tenant to pay to a landlord, from the security deposit.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

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:**

In this case the Tenant did not include a request for a monetary order for an overpayment of rent on her application for Dispute Resolution. As such I could not hear her evidence relating to any alleged overpayment of rent; as full particulars of that dispute were not included on her application for Dispute Resolution, as required by section 59(2) of the *Act*.

I made the above finding in part because the Tenant did not request a monetary order for compensation for money owed or for damage or loss under the *Act*, regulation, or tenancy agreement; she did not select an order for other reasons; and she did not explain in the details of the dispute that she was seeking compensation for an overpayment of rent.

In addition, the Tenant did not submit an amended application to describe the additional amounts she was seeking. The Tenant simply submitted a Monetary Order worksheet in her evidence submissions. Furthermore, the November 30, 2016 hearing included evidence relating to alleged payments and/or overpayments of rent. Based on the aforementioned, I declined to hear any matters or monetary requests which were not clearly listed or identified on the application for Dispute Resolution and that may have been decided upon in a previous Decision.

I find the Tenant's request to cancel the 10 Day Notices to end tenancy issued October 7, 2016 and Counsel's request for an Order of Possession and Monetary Order regarding the October 7, 2016 Notices to be substantially linked to the matter(s) that is before the Supreme Court and scheduled to be heard January 3, 2017. I make this finding in part as the 10 Day Notices issued October 7, 2016 do not waive the 10 Day Notice issued August 8, 2016, as per Policy Guideline 11.

The Orders of Possession and Monetary Order issued regarding the August 8, 2016, 10 Day Notice are scheduled for Judicial Review before the Supreme Court on January 3, 2017. If the Supreme Court dismisses the application for Judicial Review then the August 2016 and/or November 30, 2016 Decisions and Orders would be in full force and effect. That would mean this tenancy would be considered ended on the effective date of the August 8, 2016 Notice which was **August 18, 2016**, as noted in the November 30, 2016 Decision.

In addition, if the Supreme Court dismisses the Judicial Review application it would make the Tenant's October 14, 2016 application to cancel the October 7, 2016, 10 Day Notices moot, as the tenancy would already be considered to have ended on **August 18, 2016**. It would also mean the Landlord would be at liberty to file their own application to seek payment for use and occupancy of the rental unit for periods the Tenant over held or occupied the unit after the tenancy ended, and not for nonpayment of rent.

As explained to the parties during the December 7, 2016 hearing, the matter currently before me was not the Landlords' application for Dispute Resolution; therefore, I could

not consider Counsel's December 7, 2016 oral request for a Monetary Order for unpaid September and October 2016 rent.

Conversely, if the Supreme Court upholds the Judicial Review Application and sends the matter back to the RTB to be reheard, the matter would proceed based on the Orders put forth in that Supreme Court Decision. Therefore, the effectiveness of the 10 Day Notices issued October 7, 2016 cannot be determined until after the instructions from the Supreme Court are received and acted upon.

In response to the Tenant's request for the return of her security deposit, I find that request is also significantly linked to the matters before the Supreme Court. I make that finding because if the Supreme Court dismisses the Judicial Review Application the Landlords would have authority to retain the security deposit as partial payment of the Monetary Order issued in August 2016 or November 30, 2016, pursuant to section 72(2)(b) of the *Act*. If the Supreme Court sends the matter back to the RTB the tenancy will remain in full force and effect until the Supreme Court Orders are acted upon and the Landlords would retain the right to hold the security deposit and disburse it when the tenancy is ended, in accordance with section 38 of the *Act*.

Based on the above, and pursuant to section 58(2)(c) of the *Act*, I declined to hear the Tenant's October 14, 2016 application for Dispute Resolution, as the matters are substantially linked to a matter that is before the Supreme Court.

As the Tenant's application for Dispute Resolution is linked to the Tenant's application that is currently before Supreme Court, I declined to award recovery of the filing fee.

### Conclusion

I declined to hear the Tenant's October 14, 2016 application as the matters are significantly linked to matters currently before the Supreme Court.

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: December 07, 2016

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Residential Tenancy Branch