



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes            OPR, OPC, MNR, FF;    CNR, CNC, MNDC

### 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 cause, pursuant to section 55;
- a monetary order for unpaid rent and utilities, pursuant to section 67; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 3, 2016 ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated September 19, 2016 ("1 Month Notice"), pursuant to section 47; and
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 34 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Preliminary Issue - Previous Hearings

This matter was previously heard by a different Arbitrator on November 22, 28 and 29, 2016. The November 22 and 28, 2016 hearings were adjourned. The final hearing occurred on November 29, 2016, when a final decision was issued, along with a monetary order, both on November 29, 2016 ("previous hearing" and "previous decision"). Only the landlord attended the previous hearing, the tenant did not. The tenant applied for a review of the previous decision because he was unable to attend the hearing due to circumstances beyond his control. A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated December 20, 2016.

By way of the review consideration decision, the tenant was required to serve the landlord with a copy of the review consideration decision, the notice of review hearing and the written evidence that he submitted with his review application. The landlord confirmed that she did not receive the above documents from the tenant. She said that she called into the Residential Tenancy Branch ("RTB") after the tenant filed his review application, in order to find out the

outcome of the review consideration decision. She said that she was advised by the RTB that the tenant's review was granted, that a new review hearing would take place on January 20, 2016 at 9:30 a.m., and she was given the calling codes for this review hearing. Accordingly, I find that the landlord had notice of this review hearing, even though she was not served with the documents by the tenant, as required. I proceeded with the hearing on this basis and the landlord's consent.

The landlord confirmed that she served the tenant with her application for dispute resolution hearing package personally on October 5, 2016. In accordance with section 89 of the *Act*, I find that the tenant was served with the landlord's application on October 5, 2016.

The landlord confirmed that she served the tenant with an amendment to her application, dated November 3, 2016, on the same date by way of registered mail. The landlord 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 amendment on November 8, 2016, five days after its registered mailing.

The landlord confirmed that she served the tenant with her written evidence packages on November 4, 10, 17 and 22, 2016, all by way of registered mail. The landlord provided Canada Post tracking numbers for all of the above dates, verbally during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's written evidence packages on November 9, 15, 22, and 27, 2016, five days after each of their registered mailings.

The landlord testified that the tenant was not served with a written evidence package, containing approximately 26 pages, which was sent to the RTB on January 11, 2017. As required by Rule 3.1 of the RTB *Rules of Procedure*, all evidence that a party intends to rely on, is required to be served to the other party. Therefore, I advised the landlord that I would not be considering the above evidence at this hearing or in my decision because it was not served to the tenant, as required.

#### Preliminary Issue – Amendments to Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to include a monetary claim for unpaid rent and utilities, as well as an order of possession based on the 10 Day Notice. The landlord initially applied for an order of possession for cause and to recover the filing fee. She then amended her application on November 3, 2016, and included the above additional claims. I find that the tenant was properly served with the landlord's amendment, as noted above.

I also amend the landlord's application to increase the monetary claim to include December 2016 and January 2017 rent of \$590.00 for each month. The tenant is aware that rent is due on

the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice and a 1 Month Notice required him to vacate earlier. Therefore, the tenant knew or should have known that by failing to pay his 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 he did not attend this hearing.

#### Service of Notices to End Tenancy

The landlord testified that she personally served the tenant with the 10 Day Notice on October 3, 2016. It is dated September 3, 2016 and contains an effective move-out date of October 15, 2016 for unpaid rent in the amount of \$590.00 that was due on October 1, 2106. The landlord testified that the date of the 10 Day Notice was incorrect, as it should have been October 3, 2016, the date that it was served. In accordance with section 88 of the *Act*, I find that the tenant was served with the landlord's 10 Day Notice on October 3, 2016. The tenant provided a copy of this notice and disputed it in his application, so he received it from the landlord.

The landlord testified that the tenant was personally served with the 1 Month Notice on September 20, 2016. The effective move-out date is October 19, 2016. The reasons on the notice are the following:

- *Tenant has engaged in illegal activity that has, or is likely to:*
  - *Jeopardize a lawful right or interest of another occupant or the landlord;*
- *Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.*

In accordance with section 88 of the *Act*, I find that the tenant was served with the landlord's 1 Month Notice on September 20, 2016. The tenant disputed the notice in his application, so he received it from the landlord.

#### Preliminary Issue – Dismissal of Tenant's Entire Application

The tenant did not attend this hearing, despite the fact that the conference lasted 34 minutes.

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

#### Issues to be Decided

Should the landlord's 10 Day Notice and 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for unpaid rent or for cause?

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Is the landlord entitled to recover the filing fee for her application?

### Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began in mid-July 2016. Monthly rent in the amount of \$590.00 is payable on the first day of each month. A security deposit of \$200.00 was paid by the tenant but the landlord agreed to apply the deposit towards September 2016 rent, as per the tenant's request. A written tenancy agreement was not signed by the parties, as only a verbal agreement was reached. The tenant continues to reside in the rental unit.

The landlord testified that the tenant has only paid rent of \$300.00 towards October 2016 rent, leaving a balance of \$290.00. The landlord stated that the tenant has not paid rent in the amount of \$590.00 for each month from November 2016 to January 2017, totalling 1,770.00.

The landlord said that the tenant is required to pay a share of the utilities, which she estimated at \$50.00 per month for each of October and November 2016, totalling \$100.00. She said that she has not yet received the utility bills for December 2016 and January 2017. The landlord said that she did not think to submit the utility bills for October and November 2016 to the RTB.

The landlord seeks an order of possession, a monetary order for unpaid rent and utilities, and recovery of the \$100.00 application filing fee.

### Analysis

Section 55 of the *Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, provided that the notice complies with section 52 of the *Act*. I have reviewed the 10 Day Notice and I find that it complies with section 52 of the *Act*. I accept the landlord's explanation that the notice was given the wrong date by error, and that it should have been dated for October 3, 2016. I find that there was no prejudice to the tenant with this incorrect date, as the tenant received the notice and disputed it in his application. I also find that the incorrect date does not nullify the notice, as section 52 of the *Act* states simply that the notice must be "dated."

Having dismissed the tenant's application, I find that the landlord is entitled to a two (2) day order of possession, as the effective move-out date of the 10 Day Notice has passed and the tenant has not paid rent for January 2017. As an order of possession, dated November 29,

2016, was granted by the Arbitrator at the previous hearing, I confirm that the order is in full force and effect and I do not need to issue another order.

As I have confirmed an order of possession based on the landlord's 10 Day Notice, I do not need to make a determination regarding the 1 Month Notice. Accordingly, I dismiss the landlord's application for an order of possession for cause, with leave to reapply.

I accept the undisputed testimony of the landlord that the tenant has not paid rent, totalling \$2,060.00, from October 2016 to January 2017, inclusive. Accordingly, I grant a new monetary order in the amount of \$2,060.00 to the landlord. Therefore, the previous hearing monetary order of \$1,275.00, dated November 29, 2016, issued to the landlord against the tenant, is cancelled and of no force or effect. The previous hearing monetary order included unpaid rent arrears from October to December 2016.

As the landlord did not provide any utility bills to support her claim for unpaid utilities from October to November 2016, and the landlord has not yet received the utility bills from December 2016 to January 2017, this application is dismissed with leave to reapply.

As the landlord was mainly successful in her application, I find that she is entitled to recover the \$100.00 application filing fee from the tenant.

#### Further Review Applications by the Tenant

I caution the tenant to take note of the following section 79(7) of the Act:

*Application for review of director's decision or order  
(7) A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.*

Since the tenant has already filed one review with respect to this proceeding, he is not permitted to file any future reviews of this decision.

#### Conclusion

This review hearing decision is to be read in conjunction with the previous decision, dated November 29, 2016.

I confirm the previous decision which dismissed the tenant's application to cancel the 1 Month Notice and the 10 Day Notice, without leave to reapply.

The tenant's application for a monetary order in the amount of \$1,119.00 is dismissed without leave to reapply.

I confirm the previous decision which granted the landlord a two (2) day order of possession, dated November 29, 2016. That order is still in full force and effect.

The previous hearing monetary order of \$1,275.00, dated November 29, 2016, issued to the landlord against the tenant, is cancelled and of no force or effect.

I issue a new monetary order in the landlord's favour in the amount of \$2,160.00 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 to recover unpaid utilities and for an order of possession for cause, is dismissed with 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: January 20, 2017

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Residential Tenancy Branch