



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNR, OPC, OPR

### Introduction

The applications regarding the above-noted tenancy are before me pursuant to s. 58 of the *Residential Tenancy Act* (the “Act”). The landlord originally sought an order of possession pursuant to s. 55 for unpaid rent and/or for cause, a monetary order for unpaid rent pursuant to s.67, and recovery of the filing fee for this application pursuant to s. 72. At the outset of the hearing both parties advised that the tenant was no longer occupying the rental unit and the landlord withdrew her application for an order of possession. As it is no longer required, I have not considered the landlord’s original request for an order of possession.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to cross-examine the other party, and make submissions.

### Issue(s) to be Decided

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

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

### Background and Evidence

Service of the notices to end tenancy was not at issue. The tenant confirmed that she had received a 1 Month Notice to End Tenancy for Cause dated October 31, 2016 (the “1 Month Notice”) on that same date, and that the 1 Month Notice had an effective date

of November 30, 2016. The tenant also confirmed that she had received a 10 Day Notice for Unpaid Rent or Utilities dated November 12, 2016 (the "10 Day Notice") on that same date.

The tenant confirmed that she did not apply to dispute either the 1 Month Notice or the 10 Day Notice. She also confirmed that she had not paid rent for November, and that she had in fact stopped November's rent cheque as she was vacating the unit.

The tenant also stated that there was an issue with the front door lock that the landlord had not addressed in a timely way. That lock was not always functional and she was required to enter the unit through her window at times. She testified that she asked the landlord to address this twice by text and once orally and that at some point in July a man attended at the unit without notice and tried unsuccessfully to fix the problem.

### Analysis

Both parties agreed that the landlord and tenant entered into a month to month tenancy beginning May 1, 2015, with monthly rent in the amount of \$850.00 payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant and the landlord still holds the deposit. As of the date of this hearing, the tenant had not provided her forwarding address to the landlord.

The tenant testified that she vacated the rental unit on November 6, 2016. The tenant provided the Residential Tenancy Branch with a copy of the moving receipt with that date on it, but did not provide this evidence to the landlord. The landlord testified that she was not aware of the exact date the tenant vacated the rental unit but said that the tenant sent her a text on November 12 saying that she had left on November 6.

The landlord further testified that she did not wish to claim against the tenant's security deposit as that the unit had been left in a reasonable condition.

It is agreed that the tenant failed to pay the rent due on November 1, 2016. It is also agreed that the tenant received the 10 Day Notice on November 12, 2016, and that she failed to pay November rent, or dispute the 10 Day Notice, within five days of that date. As I find that the landlord's 10 Day Notice complies with s. 52 of the Act, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on November 23, 2016, the effective date on the 10 Day Notice. This is in accordance with s. 46(5) of the Act. In light of this conclusion I do not need to consider the landlord's 1 Month Notice.

A tenant is of course entitled to end a tenancy. However, section 45 of the Act requires that a tenant give notice effective on a date that is at least one month after the landlord receives notice, and the day before monthly rent was due. Here, the tenant did not notify the landlord that she wished to terminate the tenancy until after November 1, the date the rent is due. If the tenant had wished to end the tenancy on October 31 and avoid liability for November rent, then she would have had to have given notice by no later than September 30 to be effective on October 31, 2016.

Section 45(3) of the Act allows a tenant to end a tenancy with less notice if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant has given written notice of the failure. Although I make no findings on this issue, the tenant may have been able to end the tenancy earlier without liability for November's rent on the basis of the allegedly faulty front door lock. However, she would have had to dispute the landlord's 10 Day Notice and submit and serve evidence in support of her position in order to do so.

Section 7(1) of the Act establishes that a tenant who does not comply with the Act, regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26 requires that a tenant pay rent when it is due, subject to certain limited exceptions, none of which the tenant has argued apply. It is undisputed that the tenant failed to pay rent for November 2016. Therefore, I find that the landlord is entitled to \$850.00 for November's rent.

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$400.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of s.72 of the Act, I authorize the landlord to retain the tenant's security deposit of \$400.00 in partial satisfaction of the monetary claim.

### Conclusion

The landlord's application is allowed, and the 10 Day Notice, dated and served November 12, 2016, with an effective date of November 23, 2016, is upheld. The tenancy ended on November 23, 2016 as a result of the 10 Day Notice.

Additionally, I find that tenant is responsible for November's rent. As the landlord's application is successful, I also grant the landlord the cost of the filing fee in the amount of \$ 100.00 pursuant to s. 72(1) of the Act.

The tenant owes the landlord \$950.00, and I authorize the landlord to retain the \$400.00 security deposit in partial satisfaction of the amount owing and I issue a monetary order in the landlord's favour in the amount of \$450.00. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding except as otherwise provided in the Act.

Dated: January 10, 2017

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Residential Tenancy Branch