



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC CNR MNDC OLC OPR MNR

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for an Order of Possession for Unpaid Rent pursuant to section 55 and a monetary order for unpaid rent pursuant to section 67.

The tenant applied pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; cancellation of the landlord's 1 Month Notice to End Tenancy for 1 Month Notice to End Tenancy for Cause pursuant to section 47; an order requiring the landlord to comply with the *Act* pursuant to section 62; and a monetary order in compensation pursuant to section 67.

The tenant testified that she has vacated the rental unit and therefore withdrew her application to cancel the landlord's notices to end tenancy. The landlord withdrew her application for an Order of Possession.

Both parties (one tenant on behalf of both parties and the landlord) attended the hearing. Both parties were given a full opportunity to present their testimony and documentary evidence and make submissions with respect to the remaining applications. The tenant confirmed receipt of the landlord's application for dispute resolution and documentary evidence. The tenant testified that she was not aware that the landlord had amended her application. The landlord testified that she was unable to confirm receipt of the tenant's application for dispute resolution.

### Preliminary Matter: Service of Application Documents

The landlord applied for unpaid rent. At the hearing, she testified that she amended her application to include a request to recover the filing fee pursuant to section 72 however the landlord acknowledged that she had not provided the tenant with a copy of the amendment. Further, on review of the landlord's hearing materials and Residential Tenancy Branch notes, I can find no evidence of an application to amend the landlord's claim. Therefore, I will not consider the landlord's request to recover the \$100.00 filing fee.

The tenant testified that she was advised that the Residential Tenancy Branch would serve her Application for Dispute Resolution to the landlord.

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process. Service of documents is restricted by timelines and methods of service to underscore its importance. The one page Notice of Dispute Resolution Hearing document provided to the tenant when she applied for dispute resolution reads,

*Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Residential Tenancy Policy Guideline No. 12, provides guidelines for the terms of service found at section 88 to 90 in the *Act*. I find that the tenant has not met the terms of service for an application for dispute resolution. I also note that the tenant's application for dispute resolution dispute details state only that the landlord's 90 day notice and 30 day notice were unfair. The tenant makes no reference to her request for a compensation for a monetary amount owed. The tenant submitted her 10 Day Notice to End Tenancy but did not provide any information or reference to the reason she sought compensation or the breakdown of the amount of \$500.00 provided in her application.

Prior to considering the details of the tenant/applicant's claim, I must be satisfied that the tenant/applicant sufficiently served the other party, allowing that party an opportunity to know the case against them. While the landlord attended this hearing with respect to her own application, the landlord testified that she was unaware of the tenant's application. The tenant testified candidly that she did not provide the landlord with her materials for this hearing. Based on the testimony and evidence before me, I find that the tenant has not sufficiently served the other party/landlord so that the landlord is aware of the nature of the monetary claim against her. Therefore, I dismiss the tenant's

application for a monetary award for both a failure to sufficiently serve the other party as well as a failure to particularize the monetary claim made.

The tenant's application to cancel a Notice to End Tenancy is moot as she has vacated the rental unit. I also dismiss the tenant's application for an order that the landlord comply with the Act as she has failed to particularize that application. I dismiss the tenant's application for a monetary order with leave to reapply.

### Issue(s) to be Decided

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

### Background and Evidence

This tenancy began on September 1, 2016 as a one year fixed term tenancy. The rental amount of \$1900.00 was payable on the first of each month. The tenants vacated the rental unit in July 2017. The landlord continues to hold the tenants' \$950.00 security deposit paid at the outset of this tenancy. The landlord sought to retain the \$950.00 deposit towards a monetary order for unpaid rent from June 1, 2017 to July 7, 2017.

The landlord testified that she issued a 10 Day Notice to the tenant on June 2, 2017 by posting the notice on the tenants' door. The landlord testified that, by June 10, 2017, the tenant had not paid the outstanding \$1900.00 in rent for June 2017. The landlord applied for the unpaid June 2017 rent on June 8, 2017. The landlord provided undisputed sworn testimony that the tenant has not paid June 2017 rent as of the date of this hearing.

The tenant confirmed that she had not paid June 2017 rent. She testified that she had previously received a notice to end tenancy from the landlord and she had decided that she could not both pay rent and move to a new location. The tenant testified that she had vacated the unit on or about June 30, 2017 but that she did not return the keys to the landlord until July 7, 2017. The tenant testified that the reason she did not return the keys sooner is that the landlord lives in another province. The tenant testified that, after issuing her a notice to end tenancy, the landlord did not provide her with any person or means to deliver the key at the end of the tenancy.

The landlord sought \$1900 for the month of June 2017 and 7 days' worth of rent for the month of July 2017.

### Analysis

I find that the landlord is entitled to receive an order for unpaid rent in the amount of \$1900.00. I accept this undisputed testimony of the landlord that June 2017 rent had not been paid. I note that the tenant acknowledged that she did not pay June 2017 rent. Therefore, I am issuing the attached monetary order that includes \$1900.00 in unpaid rent for June 2017.

The landlord also applied for a further amount of rent for the tenant's over holding of the unit for 7 days. I accept the testimony of the tenant that she vacated herself and her belongings from the rental unit as of June 30, 2017. I accept the undisputed testimony of the tenant that the landlord did not provide a means by which the tenant could safely provide the key to the landlord at the end of June 2017. As the tenant did not have means to return the key and the return of the key is the aspect of vacating the premises which the landlord relies on in seeking further rent, I decline to award the landlord this additional rental amount.

I find that the landlord has not provided sufficient evidence or testimony to illustrate that she mitigated her loss for 7 days in July 2017. The landlord did not dispute the testimony of the tenant that there was no place or person to leave the key to the rental unit. In these particular circumstances, the landlord is not entitled to an additional amount for a portion of July 2017 rent.

The landlord continues to hold the tenant's \$950.00 security deposit. The parties agree that they will address the security deposit at the end of tenancy following the provisions of the *Act* provided above and any other relevant sections.

As noted above (preliminary issues), I dismiss the landlord's application to recover the \$100.00 filing fee paid for this application.

### Conclusion

I dismiss the tenant's application for a monetary order with leave to reapply.  
I dismiss the remainder of the tenant's application without leave to reapply.

I dismiss the landlord's application to recover her filing fee.  
I issue a monetary Order in the amount of \$1900.00 in favour of the landlord.

The landlords are provided with this monetary Order in the above terms and 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.

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: July 28, 2017

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Residential Tenancy Branch