



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, OPC, MNR, MNDCL, MNDL, FF

### Introduction

This hearing was convened in response to an application made August 30, 2017 by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order of Possession, based on a 10 day notice for unpaid rent and a breach of an agreement - Section 55;
  2. A Monetary Order for unpaid rent - Section 67; and
  3. An Order to recover the filing fee for this application - Section 72.
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- On September 26, 2017 the Landlord made an amendment to its original application to add another claim for an order of possession based on a notice to end tenancy for cause - Section 55; and
  - On November 1, 2017 the Landlord made a second amendment to its original application to add a claim for compensation and a claim for cleaning and damages to the unit - Section 67.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Parties agree to amend the Landlord's application to change the order of the initials from after the last name to between the first and last name of Tenant AE.

The Landlord confirms that the tenancy has ended and that the Landlord has possession of the unit. I therefore dismiss the claim for an order of possession made in

both the original application and the amendment made September 26, 2017. The Landlord confirms that the amendment made on November 1, 2017 was in relation to the end of the tenancy and that the original application and amendment of September 26, 2017 were made in relation to unpaid rent or other cause to end the tenancy that occurred during the tenancy.

Rule 4.1 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure (the “Rules”) allows amendments but restricts amendments to Rule 2.3 of the Rules that provide that all claims in an application must be related. Rules 2.3 also provides that, with discretion, unrelated claims made be dismissed entirely or may be dismissed with leave to reapply. Based on the evidence of the details of the claims made in the original application and the amended application of November 1, 2017, I find that the claims of damages the end of a tenancy are not related to the claims of unpaid rent or cause to end during the tenancy. I therefore dismiss the claims in the amendment made November 1, 2017 with leave to reapply. Leave to reapply is not an extension of any limitation period.

#### Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

#### Relevant Background and Evidence

The following are agreed facts: The tenancy agreement was signed on April 29, 2017 for a tenancy start date of April 1, 2017 although the Tenants moved into the unit mid-March 2017. Rent of \$900.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit.

The Landlord states that he served the Tenants with a 10 day notice to end tenancy for unpaid rent dated August 12, 2017 and another one month notice to end tenancy for cause dated September 21, 2017. The Landlord states that the notice to end for cause

contained an effective date of October 21, 2017 and was emailed to the Tenants on September 21, 2017. When asked if the Landlord subsequently served this notice in a different fashion the Landlord was silent for a time and when finally prompted for a response stated that this was a difficult question and that the Tenants received the notice. It is noted that there is no copy of a 10 day notice for unpaid rent as described by the Landlord in the Landlord's evidence package. The Tenant states that the Landlord attempted to send the Tenant documents by phone but the Tenant could not download the documents due to their size so the Tenant asked the Landlord to send paper documents. The Tenants state that they never received any notice to end tenancy of any kind on an approved form issued by the RTB.

The Landlord states that the Tenants abandoned the unit on October 1, 2017 and the Tenants state that they vacated the unit on September 30, 2017. The Parties agree that they signed a mutual agreement to end the tenancy for October 1, 2017. The Parties agree that the Tenants paid September 2017 rent. The Landlord claims unpaid rent for October 2017.

The Landlord provides a signed amendment to the tenancy agreement dated June 4, 2017 that provides for a late rent fee of \$75.00. The Landlord claims two late rent fees.

### Analysis

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. Where a tenancy ends no further rent is payable. It is unknown whether the Landlord did not understand matters or if the Landlord was purposely being vague however I found the Landlord's evidence of the issuance and service of notices to end tenancy to be muddled. I therefore overall prefer the Tenant's evidence on the details of the ending of the tenancy and find that the Landlord did not serve the Tenants with any notices to end tenancy as required by the Act. As the Parties mutually agreed to end the tenancy for October 1, 2017 and accepting the Tenant's evidence that they moved out of the unit on September 30, 2017 I find that the tenancy ended by mutual

agreement, that the Tenants did not abandon the unit, and that no rent is therefore payable for October 2017. I dismiss the Landlord's claim for unpaid October 2017 rent.

Section 7 of the RTB Regulation (the "Regulations") provides that a landlord may charge a fee of not more than \$25.00 for the late payment of rent, where the tenancy agreement provides for a late fee. Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. As the amendment to the tenancy agreement providing for a late rent fee of \$75.00 is not consistent with the maximum allowed late fee under the Regulations, I find that the fee of \$75.00 is not enforceable. I therefore dismiss the claim for late rent fees.

As none of the Landlord's claims have been successful I dismiss the claim for recovery of the filing fee and in effect the application is dismissed.

#### Conclusion

The application dismissed.

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: November 23, 2017

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Residential Tenancy Branch