



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OPRM-DR, FFL

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on September 7, 2017 for:

1. An Order cancelling a notice to end tenancy - Section 46.

The Landlord applied on October 2 and on October 11, 2017 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

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

### Settlement Agreement

During the hearing Tenant HB stated that he found a unit to move into. Tenant TH stated that she is still looking for a place but would like to enter a mutual agreement to end the tenancy. The Landlord indicated that it was agreeable to settling the matter of possession of the unit by mutual agreement as well. The Parties then reached an agreement on the matter of possession of the unit as set out below.

**The Parties mutually agree as follows:**

- 1. The tenancy will end and the Tenants will move out of the unit no later than 1:00 p.m. on December 31, 2017; and**
- 2. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.**

Section 63 of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the settlement may be recorded in the form of a decision or order. Given the mutual agreement on the matter of possession of the unit, I find that the Parties have settled this dispute as recorded above. In order to give effect to the settlement agreement I grant the Landlord an order of possession effective 1:00 p.m. on December 31, 2017.

#### Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

#### Background and Evidence

The following are agreed facts: The tenancy with the named Tenants started on August 1, 2017. Rent of \$1,200.00 is payable on the first day of each month. Prior to this tenancy Tenant TH was in a tenancy agreement with a 3<sup>rd</sup> party and this tenancy ended. The security deposit of \$600.00 and the pet deposit of \$300.00 were carried over from the previous tenancy with the agreement of Tenant TH.

The Landlord states that the Tenants owe \$600.00 for October 2017 rent, \$1,200.00 for November 2017 rent and \$1,200.00 for December 2017 rent. The Landlord states that the only rent cheque received from a government agency on behalf of Tenant MB was for \$600.00 on October 25, 2017 and that this was applied to rent owed of \$600.00 for September 2017. The Landlord states that no other cheques have been received by the Landlord from this government agency on behalf of Tenant HB. The Landlord gave detailed evidence of all rents received to date as follows:

- \$450.00 cheque received July 25, 2017 from a 3<sup>rd</sup> party;
- \$750.00 cash received August 4, 2017 from Tenant HB;
- \$450.00 cheque received August 28, 2017 from a 3<sup>rd</sup> party;
- \$600.00 cash received on September 22, 2017 from Tenant HB;
- \$150.00 cheque received October 3, 2017 from a 3<sup>rd</sup> party; and
- \$600.00 cheque received October 25, 2017 from a government agency on behalf of Tenant HB.

Tenant HB states that the September 2017 cheque was for October 2017 rent and that another cheque should have been sent by the government agency for November 2017 rent. Tenant HB agrees that no government cheque was sent for December 2017 rent as the government agency stopped the payments due to a separate matter. Tenant HB states that there is no smoke detector in the unit. It is noted that Tenant TH left the hearing at approximately 10:50 a.m. to attend another matter and provided no evidence in relation to rental payments.

### Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Given the Landlord's detailed evidence of rents received and although I consider Tenant HB's evidence to be sincere, considering that the Tenant only has a belief that a second rent cheque should have been sent to the Landlord I find on a balance of probabilities that no second rent cheque was received by the Landlord on behalf of Tenant HB. I therefore find on a balance of probabilities that the Landlord has substantiated that rent of **\$3,000.00** is owed by the Tenants. The Landlord made two applications however only the application made October 11, 2017 claims recovery of the filing fee. As the Landlord's claim for unpaid rent has had merit I find that the Landlord is entitled to recovery the **\$100.00** filing fee for a total entitlement of **\$3,100.00**. Deducting the combined security and pet deposit of **\$900.00** plus zero interest leaves **\$2,200.00** owed to the Landlords.

Conclusion

I grant the Landlord an order of possession effective 1:00 p.m. on December 31, 2017.

I grant the Landlord an order under Section 67 of the Act for **\$2,200.00**. If necessary, this order may be filed in the Small Claims 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: December 04, 2017

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Residential Tenancy Branch