



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing dealt with the landlord's application, pursuant to the *Residential Tenancy Act* ("Act") for:

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

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

- cancellation of the landlord's 10 Day Notice to End Tenancy Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for their application, pursuant to section 72.

"Tenant JB" did not attend this hearing, which lasted approximately 69 minutes. Tenant AB ("tenant"), the landlord and the landlord's lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that her lawyer had permission to speak on her behalf and the tenant confirmed that she had permission to speak on behalf of tenant JB, at this hearing.

This hearing began at 9:30 a.m. and ended at 10:39 a.m. At approximately 9:59 a.m., I was unexpectedly disconnected from the teleconference, so all parties on the line were disconnected since I was the moderator of the conference. At approximately 10:00 a.m., I returned to the conference and all parties did as well. I continued the conference after the one-minute disconnection.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

During the hearing, the tenant confirmed that she received some written evidence from the landlord by way of email. She reviewed the evidence during the hearing. As both parties settled the matter between themselves, I do not find it necessary to record findings of service of this evidence from the landlord to the tenants.

#### Preliminary Issue – Use of Speakerphone during the Hearing

At the outset of the hearing, I asked all parties to remove their phones from speakerphone. The tenant confirmed that she was not using a speakerphone. The landlord's lawyer said that he was. I asked the landlord and her lawyer to remove their phone from speakerphone because it was causing echoing and feedback. The landlord's lawyer initially objected claiming that he never had issues with the speakerphone at previous Residential Tenancy Branch ("RTB") hearings and he wanted to physically be in the same room with the landlord in order for both to look at the same documents.

I informed the landlord's lawyer that the echoing and feedback was interfering with my ability to properly hear the parties and their evidence. I notified him that the landlord could call in from a separate phone line, the landlord could remain in the same room and her lawyer could hand the phone to her when she needed to speak, or the landlord could pick up another phone on the same line as her lawyer.

The landlord then called in with a separate phone but remained in the room with her lawyer, which caused the same echoing and feedback. The landlord then left the room and went to a noisy waiting room and then another private room.

In the end, the landlord returned to the same room as her lawyer and used a separate phone line to participate in the conference. As per my suggestion, the landlord muted her phone when she was not speaking and when she did speak, the echoing continued.

However, I did my best to accommodate the parties, given the 15-minute time lapse it took for the landlord and her lawyer to organize themselves after repeated complaints from them about my directions. I did not hear evidence from the parties during this 15-minute delay between 9:30 and 9:45 a.m.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The landlord agreed that the tenants had vacated the rental unit and that no order of possession was required against the tenants;
2. The landlord agreed that her 10 Day Notice and 1 Month Notice, were both cancelled and of no force or effect;
3. The tenant confirmed that the tenants would bear the cost of the \$100.00 filing fee paid for their application;
4. Both parties agreed that the tenants owe the landlord \$7,200.00 in unpaid rent for this tenancy and \$100.00 for the landlord's application filing fee, to be paid according to the following terms:
  - a. The landlord agreed to deduct \$500.00 for the hot water issue paid by the tenants;
  - b. Both parties agreed that the landlord will retain the tenants' entire security deposit of \$900.00;
  - c. Both parties agreed that the tenants will pay the landlord the balance of \$5,900.00 according to the following payment schedule:
    - i. \$500.00 to be paid by February 2, 2018;
    - ii. \$500.00 to be paid by February 16, 2018;
    - iii. \$500.00 to be paid by March 2, 2018;
    - iv. \$500.00 to be paid by March 16, 2018;
    - v. \$500.00 to be paid by March 30, 2018;
    - vi. \$500.00 to be paid by April 13, 2018;
    - vii. \$500.00 to be paid by April 27, 2018;
    - viii. \$500.00 to be paid by May 11, 2018;
    - ix. \$500.00 to be paid by May 25, 2018;
    - x. \$500.00 to be paid by June 8, 2018;
    - xi. \$500.00 to be paid by June 22, 2018;
    - xii. \$400.00 to be paid by July 6, 2018;

5. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both parties' applications made at this hearing.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

When I asked the landlord's lawyer to affirm the above agreement, since he had been part of all settlement discussions and was legally advising the landlord about the settlement, he refused to do so. He took particular issue with the fact that this was a legal, final, binding, enforceable settlement and that the parties could not come back after the hearing to change their minds or the terms of the settlement. When I questioned what the issue was, he refused to answer me indicating it was "legally incorrect" and "I'm not going to give you legal advice." However, the landlord affirmed under oath that she understood that this was a legal, final, binding and enforceable settlement and that she understood that she could not change the terms after the hearing or return to change her mind. The landlord voluntarily agreed to settle this matter, despite her lawyer's remarks above.

I also cautioned the landlord and her lawyer about offsetting the security deposit against the unpaid rent, which they both suggested to do during this settlement. I notified the landlord that while the security deposit could be used to offset unpaid rent, it could also be used for a damages claim against the tenants. The landlord confirmed that the tenants caused damages to the rental unit so I notified her that she could file a new future application at the RTB and pay a new filing fee and wait for a new hearing date in order to deal with that matter. The parties were unable to settle the damages portion at this hearing. The landlord confirmed that she understood that by using the security deposit now, she would not be able to use it against her future damages claim against the tenants.

#### Rule 6.10 of the RTB Rules of Procedure

Given the conduct of both the landlord and her lawyer during this entire hearing, I caution them to make note of the following rule prior to attending any future RTB hearings:

#### *6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*

*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

### Conclusion

The landlord's 10 Day Notice and 1 Month Notice are both cancelled and of no force or effect.

The tenants must bear the cost of the \$100.00 filing fee paid for their application.

I order the landlord to retain the tenants' entire security deposit of \$900.00.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$5,900.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant(s) fail to pay the landlord \$5,900.00 as per conditions #4(c)(i) to (xii) of the above agreement. The tenant(s) must be served with a copy of this Order. Should the tenant(s) 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: January 16, 2018

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Residential Tenancy Branch