



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

This participatory hearing was convened after the issuance of a November 07, 2017, interim decision. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceeding, as had been originally requested. The Adjudicator reconvened the landlord's application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:43 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave undisputed affirmed testimony that both copies of the notice of this reconvened hearing was personally served to Tenant J.D. on November 08, 2017. In accordance with section 89 (1) of the *Act*, I find that Tenant J.D. was duly served with the notice of this reconvened hearing. In accordance with section 89 (2) of the *Act*, I find that Tenant T.S. was duly served with the notice of this reconvened hearing, in consideration of the Order of Possession only.

The landlord also gave witnessed documentary evidence that a Landlord's Application for Dispute Resolution (the Application) and evidentiary package, which was a part of the direct request proceeding package, was posted to the door of the rental unit on November 07, 2017. In accordance with sections 88 and 89 (2) of the *Act*, I find the tenants were deemed served with the Application and evidentiary package on November 10, 2017.

The landlord gave undisputed affirmed testimony that a 10 Day Notice to End Tenancy (the 10 Day Notice) was personally handed to Tenant J.D. on October 20, 2017. In accordance with section 88 of the *Act*, I find the 10 Day Notice was duly served to the tenants.

At the outset of the hearing the landlord testified that the tenants vacated the rental unit sometime in November 2017. The landlord requested to withdraw their application for an Order of Possession.

The landlord's application for an Order of Possession is withdrawn.

#### Issues(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 from the tenants?

#### Background and Evidence

The landlord gave written evidence that this tenancy began on April 01, 2017, with a monthly rent of \$1,800.00, due on the first day of each month. The landlord testified that they did not obtain a security or pet damage deposit from the tenants.

The landlord gave undisputed affirmed testimony that the tenants have not paid the monthly rent for October 2017 and November 2017.

#### Analysis

Section 89 (1) of the *Act* requires the notice of reconvened hearing to be personally served to the tenant or sent by registered mail to the tenant. Section 89 (2) of the *Act* allows for the notice of reconvened hearing to be left with an adult who resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the notice of reconvened hearing for Tenant T.S. was left with an adult who resides with him and was not served in accordance with section 89 (1) of the *Act*. As the landlord withdrew their request for an Order of Possession and is only seeking a monetary amount, I dismiss the Application naming Tenant T.S. as a respondent, without leave to reapply.

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Based on the undisputed written evidence and affirmed testimony of the landlord, I find the landlord is entitled to a monetary award of \$3,600.00 against Tenant J.D., for unpaid rent owing for this tenancy for October 2017 and November 2017.

As the landlord has been successful in their Application, I allow them to recover the filing fee for this Application from Tenant J.D.

Conclusion

I grant a monetary Order in the landlord's favour against Tenant J.D. under the following terms, which allows the landlords to recover unpaid rent and to recover the filing fee for this Application:

Item	Amount
Unpaid October 2017 Rent	\$1,800.00
Unpaid November 2017 Rent	1,800.00
Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$3,700.00</b>

The landlord is provided with these Orders in the above terms and Tenant. J.D. must be served with this Order as soon as possible. Should Tenant J.D. fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 23, 2018

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Residential Tenancy Branch