



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEREGRINE ENTERPRISES INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPL, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act, (the “Act”), for an order of possession, a monetary order for unpaid rent and an order to recover the cost of filing the application from the Tenant.

The Landlord’s agent (the Agent) appeared and gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The Agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on March 5, 2018, a Canada post tracking number was provided as evidence of service. Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

At the outset of the hearing the Agent stated that the Tenant had moved out of the rental unit on April 4, 2018 with no notice. As the Tenant was no longer in the unit the Agent stated that they no longer required an order of possession, and that they wished to proceed regarding the request for a monetary order for the unpaid rent.

Issue(s) to be Decided

- Is the Landlord entitled a monetary order for unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Agent testified that the tenancy began on December 1, 2017 as a month to month tenancy. Rent in the amount of \$1,800.00 was to be paid by the first day of each month and that the Tenant had paid the Landlord a \$300.00 security deposit. The tenancy ended on April 4, 2018, when the Tenant moved out.

The Agent testified that a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) was personally served on the Tenant on February 6, 2018, with an effective end of tenancy date of April 30, 2018.

The Agent testified that a 10-Day Notice for Unpaid Rent or Utilities (the 10-Day Notice) was personally served on the Tenant on February 22, 2018, with an outstanding rent amount of \$4,425.00, with an effective end of tenancy date of March 4, 2018.

The Agent testified that there is currently \$8,025.00 in unpaid rent; \$1,425.00 for December 2017, \$1,200.00 for January 2018, \$1,800.00 for February 2018, \$1,800.00 for March 2018 and \$1,800.00 for April 2018. The Agent confirmed that the one month compensation due to the Tenant under the Two Month Notice, has not been paid.

Analysis

Based on the unchallenged testimony and documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted the Notice under section 46(5).

**Landlord's notice: non-payment of rent**

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect,
  - or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenant did not pay the rent or dispute the Notice, and is conclusively presumed to have accepted the Notice.

Section 50 (1) of the Act permits a tenant who receives a 2-Month Notice under section 49 of the *Act* to end the tenancy before the effective date of the notice by providing the landlord with “at least 10 days written notice” and paying the rent due to the effective date of the tenant’s notice.

**Tenant may end tenancy early following notice under certain sections**

- 50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by
- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice,

In this case, the Agent testified that the Tenant vacated the rental unit on April 4, 2018 without notice. I find that the Tenant failed to give the Landlord 10-day's written notice of their intent to leave early as required by the *Act*. I therefore find that the Landlord received notice of the Tenant's intent to end the tenancy early on April 4, 2018, the same day the Tenant moved out and that the earliest the tenancy could have ended was on April 14, 2018. I find that the Tenant is required to pay a prorated rent for the period of the month in which the tenancy was in effect, from April 1-14, 2017.

I find the Landlord has established an entitlement to a monetary award in the amount of \$7,065.00, pursuant to section 46 of the *Act*. The monetary award is comprised of rent for the period of April 1-14, 2017, inclusive ( $(\$1,800.00 / 30) \times 14 \text{ days} = \$840.00$ ) and the outstanding rent due for the months of December 2017, January 2018, February 2018, and March 2018.

However, pursuant to section 50(1) of the *Act*, the Tenant is entitled to the equivalent of one months rent as compensation as they received the Two Month Notice from the Landlord.

**Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Accordingly, I find the Tenant is entitlement recover the \$1,800.00 due to her as compensation pursuant to section 51 of the *Act*.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$4,965.00, which is comprised of, \$7,065.00 for the outstanding rent due at the end of the tenancy, less the \$300.00 that the Landlord holds as a security deposit and less the \$1,800.00 due as compensation to the Tenant pursuant to sections 50(1) of the *Act*.

<u>Rent</u>	<u>Due</u>	<u>Paid</u>	<u>Outstanding</u>
December/2018	\$1,800.00	-\$375.00	\$1,425.00
January/2019	\$1,800.00	-\$600.00	\$1,200.00
February/2019	\$1,800.00	\$0.00	\$1,800.00
March/2019	\$1,800.00	\$0.00	\$1,800.00
April/2019	\$840.00	\$0.00	\$840.00
Total Outstanding Rent			\$7,065.00
Security Deposit Held			-\$300.00
2 Month Notice Compensation			-\$1,800.00
<b>Due</b>			<b>\$4,965.00</b>

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee.

### Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a Monetary Order in the amount of \$5,065.00 for the outstanding rent and for the recovery of the filing fee for this application. The Landlord is provided with this 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: April 25, 2018

---

Residential Tenancy Branch