



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CATHERWOOD HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL MNDCL MNRL OL OPR

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord and the owner of the landlord company attended the hearing and the landlord's agent gave affirmed testimony. The tenant and a witness also attended and each gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on August 1, 2017 and the tenant still resides in the rental unit. Rent in the amount of \$1,200.00 per month is payable on the 1<sup>st</sup> day of each month. No security deposit or pet damage deposit was

collected by the landlord. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on February 27, 2018 an adult person at the rental unit was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) so that the tenant would pay the rent, and was advised that the person served is the tenant's mother who apparently resides with the tenant, although not listed as a tenant in the tenancy agreement. A copy of the Notice has been provided as evidence for this hearing. It is dated February 27, 2018 but contains no effective date of vacancy. It shows that the tenant failed to pay rent in the amount of \$1,200.00 that was due on February 1, 2018. On March 1, 2018 the tenant paid \$1,200.00 but by that date rent was due for March, 2018.

Usually the tenant attended at the owner's home and paid cash sometimes leaving it in the mailbox in an envelope but never on time and it was confusing what was paid. The landlord's agent or the owner of the landlord company would make a note on the envelope and keep it in a personal file to keep track. Receipts are not produced because the tenant said he didn't need one. The tenant has sporadically paid rent, as follows:

- July 29, 2017 \$1,200.00 the tenant paid rent in full for August, 2017;
- the next rent paid was on October 15, 2017 in the amount of \$1,200;
- November 14, 2017 the tenant paid \$1,200.00;
- December, 2017 no rent was paid;
- January, 2018 the tenant paid \$1,000.00;
- February 27, 2018 the Notice was served and the tenant paid \$1,200.00 on March 1, 2018.

The landlord applied for an Order of Possession and a monetary order for unpaid rent by way of the Direct Request process and gave the tenant the documents for that application on March 17, 2018, and the tenant gave the landlord's agent \$1,100.00 in cash for which a receipt was issued that stated that the money was being accepted for use and occupancy only. The landlord's application was dismissed with leave to reapply.

The tenant currently owes \$1,200.00 for September, \$1,200.00 for December; \$200.00 for January; \$100.00 for March; \$1,200.00 for April and \$1,200.00 for May. However, earlier this week the tenant paid an additional \$1,900.00, bringing the total of rent owed to \$3,200.00.

The landlord has provided 2 Monetary Order Worksheets, one dated April 6, 2018 and the other dated May 3, 2018, as well as a document entitled "Actual outstanding owed," and a detailed letter. The April 6, 2018 Monetary Order Worksheet claims:

- \$100.00 for the filing fee;
- \$1,200.00 for February, which is crossed off and marked paid;
- \$200.00 for January;
- \$100.00 for March;
- \$1,200.00 for April;
- an erased amount for April; and
- \$600.00 for the damage deposit;

for a total claim of \$1,300.00, changed to \$2,100.00.

The document dated May 3, 2018 shows a claim for:

- \$650.00 for the damage deposit;
- \$1,200.00 for September rent;
- \$1,200.00 for December rent;
- \$200.00 for January, 2018 rent;
- \$100.00 for March, 2018 rent;
- \$1,200.00 for April, 2018 rent; and
- \$1,200.00 for May, 2018 rent;

for a total claim of \$5,750.00, and the landlord's agent testified that an error was made, in that the damage deposit was supposed to be \$600.00, not \$650.00. The tenant also paid the additional \$1,900.00 this week, bringing that total to \$3,200.00.

**The tenant** testified that he is in arrears of rent, but does not believe the landlord's records are correct.

The tenant paid rent in September and October, 2017 but both were paid late. The tenant was getting paid late by his boss, and in October, 2017 the landlord (HC) said that it's not working because rent isn't paid on time. The tenant got another job to get paid on time, and worked there until January, 2018.

In December, 2017 the tenant got a bonus and gave the landlord (HC) \$2,000.00 in cash. The tenant was up to date to January 1.

The tenant had a minor heart attack at the beginning of March, 2018 and had 2 surgeries after that. He tried to talk to the landlord's agent about it but she was rude and told the tenant she wanted possession in 2 days.

The tenant believes he owes \$200.00 for January; \$100.00 for March and \$500.00 for May's rent. The tenant didn't start getting receipts until the landlord applied for an order by the Direct Request process.

**The tenant's witness** is the tenant's mother and has resided in the rental unit with the tenant since the beginning of the tenancy.

The witness has been with the tenant, waiting in the car, at least 3 times while the tenant went into the landlord's home to pay rent in cash.

### Analysis

Where a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in the Notice. If the tenant disputes the Notice, a hearing is scheduled. If the tenant pays the rent, the Notice is of no effect. In this case, the tenant paid the rental amount stated in the Notice within that 5 day period, and therefore, the Notice is of no effect. The landlord's application for an Order of Possession is dismissed.

With respect to the landlord's monetary claim, the onus is on the landlord to establish what payments were required and not made.

I also advised the parties that I would be reviewing the Decision of the director from the Application for Dispute Resolution by way of the Direct Request process to ensure I make no orders or findings contrary to what has already been decided upon. The landlord's application was dismissed with leave to reapply due to deficiencies in the tenancy agreement, which require a participatory hearing. The parties in this case agree that a tenancy exists for rent in the amount of \$1,200.00 per month payable on the 1<sup>st</sup> day of each month.

I have reviewed the landlord's evidentiary material, including both Monetary Order Worksheets and the "Actual outstanding owed" document and the detailed letter. However, the *Act* requires a landlord to provide receipts for all payments made in cash, whether or not the tenant wants a receipt. In the absence of receipts or a tenant ledger or some sort of evidence to establish what is owed, I am not satisfied that the landlord has established the claim in its entirety. Keeping notes on an envelope may suffice, if such envelopes are provided as evidence for a hearing. In the absence of such evidence, and where it boils down to one person's word over another, the claim has not been proven.

The tenant agrees that he is in arrears of rent totaling \$800.00, and beyond that amount, I am not satisfied that the landlord has established a greater amount. I find that the landlord is entitled to a monetary order in the amount of \$800.00 for unpaid rent.

With respect to the landlord's claim for a security deposit, the tenancy agreement does not require one, and I am not satisfied that the landlord has established that a security deposit was agreed to. The *Residential Tenancy Act* states that a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement. Given that the tenancy began on August 1, 2017, the landlord may not claim trust money on behalf of the tenant for a security deposit several months after the tenancy began.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed, and the tenancy continues.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$900.00.

This order is final and binding and may be enforced.

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: May 29, 2018

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Residential Tenancy Branch