



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC  
                             MNRL-S, OPR, OPL, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on May 12, 2018. The Tenant applied to cancel a 10-Day Notice for Unpaid Rent and requested an order for the Landlords to comply with the Act. The Landlord’s Application for Dispute Resolution was made on May 24, 2018. The Landlords applied for an Order of Possession, a Monetary Order for unpaid rent and to recover their filing fee.

Both the Landlords and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony 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 matter

The Landlord’s submitted an amendment to their application to include a request for an order of possession pursuant to section 49 of the Act on May 29, 2019. As the Tenant could not confirm receipt of the notice for the amendment request from the Landlord I will not accept the amendment. However, I will proceed with the Landlord’s original application.

### Issues to be Decided

- Should the Notice issued on May 4, 2018, be cancelled pursuant to section 46 of the Act?
- Should the Landlords be ordered to comply with the Act?
- Are the Landlords entitled to an order of possession pursuant to either section 46 of the Act?
- Are the Landlords entitled to monetary compensation for unpaid rent?
- Are the Landlord entitled to retain the security deposit in partial satisfaction of the claim?
- Are the Landlords entitled to recover the cost of the filing fee?

### Background and Evidence

Both parties agreed that the tenancy began on October 1, 2011, as a month to month tenancy. Rent in the amount of \$1,225.00 is to be paid by the first day of each month and that the Tenant paid the Landlord a \$612.50 security deposit and a \$200.00 pet damage deposit.

Both parties testified that the Tenant received a Two Month Notice for Landlord Use of the Property (the Two Month Notice) on April 25, 2018, with an effective date of June 30, 2018. Both parties testified that the Tenant is still living at the rental unit and has not paid the May, June or July 2018, rent. Both parties agreed that the Tenant received a 10 Day Notice for Unpaid Rent on May 4, 2018 (the 10-Day Notice).

The Tenant testified that he had not paid the May 2018, rent as he had installed a new water heater into the rental unit. The Tenant testified that he did not have an agreement with the Landlords to exchange the water heater for the May rent, and that the need to replace the water heater had not been an Emergency Repair.

The Landlords testified that there is currently \$1,225.00 in unpaid rent outstanding, as they agree that the June 2018, rent payment was covered by the one-month compensation due to the Tenant under the Two Month Notice they issued. The Landlords also testified that they have not received any rent for July 2018. The Landlords testified that this hearing was the first time they had heard that the Tenant had replaced that water heater and that they had no knowledge of there being a problem with the previous water heater and that they had not agreed to the replacement.

The Tenant testified that he did not dispute the Two Month Notice but that he had not moved out in accordance with that notice as he had not found a new place.

### Analysis

Based on the testimony of the Landlords and the Tenant, the 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 received the 10-Day notice on May 7, 2018, and did apply to dispute the Notice within the legislated timeline. The Tenant testified that he did not pay the outstanding rent as stated on the notice and that he did not have permission from

the Landlords to withhold the rent, nor did he have an order from this office allowing him to withhold any portion of the rent. Therefore, I find that the Tenant is in breach of section 26 of the *Act* by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenant's application to cancel the Notice.

Section 55(1) of the *Act* states:

Order of possession for the landlord

**55(1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 55 of the *Act*, I must grant the Landlords an order of possession to the rental unit.

Additionally, I find that the Landlords have established an entitlement to a monetary award in the amount of \$1,225.00, pursuant to section 46 of the *Act*. Also, having been successful, I also find the Landlords are entitled to recover their \$100.00 filing fee and may keep the security deposit in partial satisfaction of the claim.

<u>Rent</u>	<u>Due</u>	<u>Paid</u>	<u>Outstanding</u>
May 2018	\$1,225.00	\$0.00	\$1,225.00
June 2018	\$1,225.00	\$0.00	\$1,225.00
Total Outstanding Rent			\$2,450.00
One Months Compensation			-\$1,225.00
Filing Fee			\$100.00
			\$1,325.00
Security Deposit Held			-\$612.50
Pet Damage Deposit Held			-\$200.00
<b>Due</b>			<b>\$512.50</b>

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$512.50 for the outstanding rent due for May 2018 and the return of their filing fee, less the security and pet damage deposits they hold.

I caution the Tenant, that the Landlords are also entitled to rent on a per diem basis for each day that the Tenant over holds the rental unit, after June 30, 2018. As such, the landlord remains at liberty to file a new and separate Application for Dispute Resolution seeking this overholding compensation within any limitations set forth in the *Act*.

### Conclusion

The Tenants application is dismissed, without leave to reapply. The Notice to End Tenancy date May 4, 2018, is valid and this tenancy will end in accordance with the *Act*, no later than 2 days after service of this Order upon the Tenant.

I find for the Landlords under sections 67 and 72 of the *Act*. I grant the Landlords a Monetary Order in the amount of \$512.50 for the outstanding rent and the recovery of the filing fee for this application.

The Landlords are 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: July 6, 2018

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Residential Tenancy Branch