



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, MNRL, FFL, CNR, MNDC, OLC

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent on the basis of the 10 Day Notice to End Tenancy (the 10 Day Notice) of May 16, 2018, pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.
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The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) of June 5, 2018, pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

### Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent? Is the tenant entitled to a monetary award for losses and damages arising out of this tenancy? Should any other orders be issued with respect to this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Preliminary Matter - Service of Dispute Resolution Hearing Packages

The landlord gave sworn testimony that they left a copy of the landlord's dispute resolution hearing package on the tenant's kitchen table on June 5, 2018. The tenant testified that they never received this package. Leaving documents of this type on a kitchen table is not one of the methods in section 89 of the *Act* to serve a dispute resolution hearing package to a tenant. As I am not satisfied that the landlord's dispute resolution hearing package was served to the tenant in accordance with section 89 of the *Act*, I dismiss the landlord's application with leave to reapply.

The tenant gave sworn testimony that they handed the landlord a copy of the tenant's dispute resolution hearing package on June 14, 2018. The landlord testified that they had never received a copy of the tenant's dispute resolution hearing package for this hearing. As the tenant was unable to provide any evidence other than his sworn testimony that the tenant's dispute resolution hearing package was served to the landlord in accordance with section 89 of the *Act*, I find that the tenant has not demonstrated to the extent required that their dispute resolution hearing package was served to the tenant. I dismiss the tenant's application with leave to reapply.

### Background and Evidence

In written evidence and in sworn testimony at this hearing, the tenant noted that orders have been issued to the landlord by previous arbitrators appointed pursuant to the *Act*.

In a February 15, 2018 decision noted on the first page of this decision, an arbitrator appointed pursuant to the *Act* made the following order:

*Pursuant to section 62 of the Act, I order the landlord to have certified and professional pest control personnel attend the property by March 31, 2018. Failure to do so may lead to further applications being brought against his property.*

In a May 24, 2018, another arbitrator appointed pursuant to the *Act* issued the following orders to the landlord:

*I hereby order the landlord to retain a professional electrician and a professional gas fitter and technician to repair the inside and outside electrical and the natural gas appliances in the rental property immediately. I also order the landlord to refrain from tampering with any tags or orders by the natural gas technician or electrician or by-law officer. If the landlord fails to have all of the repairs completed by June 15, 2018 the tenant will be at liberty to apply for further compensation.*

*I further grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the Residential Tenancy Act in the amount of \$3,075.00, and I order that the*

*tenant be permitted to reduce rent for future months until that sum is realized, or may otherwise recover it.*

At the current hearing, the tenant gave undisputed sworn testimony that in addition to the landlord failing to abide by the terms of any of the above-noted orders issued by arbitrators appointed pursuant to the *Act*, the landlord had withdrawn mail service and hydro to the rental unit. The landlord did not dispute the tenant's claim that the landlord had withdrawn mail and hydro service to the tenant. The landlord claimed that the rental property was now "closed" and listed on the market for sale.

### Analysis

As this tenancy continues until ended in accordance with the *Act*, I advised the landlord at the hearing that I was making the following final and binding orders with respect to this tenancy. I do so pursuant to section 62 of the *Act*.

1. I order the landlord to restore Canada Post mail service to this property as soon as possible and to ensure that the tenant has access to a mailbox where his mail can be deposited.
2. I order the landlord to restore hydro service to the tenant in this rental property as soon as possible.

I also remind the landlord that should the landlord continue to disregard orders issued by arbitrators appointed pursuant to the *Act* that section 87.1 of the *Act* allows the Director of the Residential Tenancy Branch (RTB) to conduct investigations to ensure compliance with the *Act* and to issue Administrative Penalties against the landlord. Section 87.3 of the *Act* provides the following powers to impose monetary penalties on those who fail to comply with a decision or order issued pursuant to the *Act*.

### ***Administrative penalties***

**87.3** (1)*Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has*

- (a) contravened a provision of this Act or the regulations, or*
- (b) failed to comply with a decision or order of the director...*

As outlined below, section 87.4 of the *Act* describes the amount of the penalty that may be imposed against a party who fails to comply with a decision or order of an arbitrator appointed pursuant to the *Act*.

### ***Amount of penalty***

**87.4** (1) *A monetary penalty imposed under section 87.3 (1) may not exceed \$5 000.*

*(2) If a contravention or failure referred to in section 87.3 occurs over more than one day or continues for more than one day, separate monetary penalties, each not exceeding the maximum under subsection (1) of this section, may be imposed for each day the contravention or failure continues...*

### Conclusion

Both applications are dismissed with leave to reapply.

1. I order the landlord to restore Canada Post mail service to this property as soon as possible and to ensure that the tenant has access to a mailbox where his mail can be deposited.
2. I order the landlord to restore hydro service to the tenant in this rental property as soon as possible.

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 24, 2018

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Residential Tenancy Branch