



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNRL-S, OPR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 10, 2018 (the “Application”). The Landlord applied for an Order of Possession based on 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 2, 2018 (the “Notice”). The Landlord also sought to recover unpaid rent and reimbursement for the filing fee. The Landlord sought to keep the security deposit to offset the monies owed.

The Landlord appeared at the hearing. Nobody appeared for the Tenant. I explained the hearing process to the Landlord who did not have questions about the process when asked. The Landlord provided affirmed testimony.

The Landlord asked that the Order of Possession indicate “basement suite” and this is reflected on the front page of this decision and on the Order of Possession issued.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that he posted the hearing package and evidence on the door of the rental unit on July 19, 2018. He said he subsequently asked the Tenant if he had received the Notice of Hearing and the Tenant said he did.

Based on the undisputed testimony of the Landlord, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(g) and 89(2)(d) of the *Residential Tenancy Act* (the “Act”). I have concerns about the date the hearing package and evidence were served; however, I find the hearing package and evidence were served in sufficient time to allow the Tenant to appear at the hearing.

I told the Landlord that service under section 89(2)(d) of the *Act* is only sufficient for an application for an Order of Possession under section 55 of the *Act* and not for a Monetary Order under section 67 of the *Act*. I find that it is not appropriate to consider the Landlord's request for unpaid rent in the circumstances and I dismiss this aspect of the Application with leave to re-apply.

As I was satisfied of service under section 89(2)(d) of the *Act*, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlord had submitted a written tenancy agreement as evidence. It is between the Landlord and Tenant regarding the rental unit. The tenancy started May 1, 2018 and is a month-to-month tenancy. Rent is \$950.00 per month. The agreement does not state when rent is due; however, the Landlord testified that rent is due on the first day of each month and that this was the agreement between the Landlord and Tenant. The Landlord confirmed that the Tenant paid a \$475.00 security deposit. The agreement is signed by the Landlord and Tenant.

The Notice states the Tenant failed to pay \$950.00 rent due on July 1, 2018. The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of July 11, 2018.

The Landlord testified that he served both pages of the Notice on the Tenant July 2, 2018 by posting it on the door of the rental unit.

The Landlord testified that the Tenant only paid rent for May and June. The Landlord testified that the Tenant has not paid any of the outstanding rent since the Notice was

issued. The Landlord was not aware of the Tenant disputing the Notice. The Landlord said the Tenant did not have authority under the *Act* to withhold rent.

### Analysis

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy where a tenant has failed to pay rent. The relevant portions of section 46 state:

- 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...
- (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.

...

Based on the undisputed testimony of the Landlord, and the written tenancy agreement, I find the Tenant was obligated to pay \$950.00 in rent for July by July 1, 2018. I accept the undisputed testimony of the Landlord that the Tenant did not have a right to withhold

rent under the *Act*. Therefore, I find the Tenant was required to pay rent under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I accept the undisputed testimony of the Landlord that the Tenant did not pay rent for July by July 1, 2018. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve him with the Notice pursuant to section 46(1) of the *Act*.

I accept the undisputed testimony of the Landlord in relation to service of the Notice and find the Notice was served on the Tenant in accordance with section 88(g) of the *Act*. The Tenant was deemed to have received the Notice on July 5, 2018 pursuant to section 90(c) of the *Act*.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on July 5, 2018 to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of the Landlord that the Tenant did not pay any of the outstanding rent after the Notice was issued. I accept the undisputed testimony of the Landlord that the Tenant did not dispute the Notice. I note that I have no evidence before me that the Tenant did dispute the Notice.

Given the above, the Tenant was conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended July 15, 2018, the corrected effective date of the Notice. The Tenant was required to vacate the rental unit by July 15, 2018. The Landlord is therefore entitled to an Order of Possession and I grant this Order pursuant to section 55 of the *Act*. The Order is effective two days after service on the Tenant.

As the Landlord was successful in this application, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to keep \$100.00 of the security deposit at the end of the tenancy as reimbursement for the filing fee.

Conclusion

The Landlord's application for an Order of Possession is granted. The Landlord is granted an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to reimbursement for the \$100.00 filing fee. I authorize the Landlord to keep \$100.00 of the security deposit at the end of the tenancy as reimbursement for the filing fee.

The Landlord's application for a Monetary Order for unpaid rent is dismissed with leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 31, 2018

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Residential Tenancy Branch