



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 43 HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL MNRL-S OPR

### Introduction

This hearing was scheduled to convene at 11:00 a.m. this date 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; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord attended the hearing and gave affirmed testimony, and was accompanied by another agent of the landlord, who did not testify or take part in the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing (the Hearing Package) on August 2, 2018 by registered mail to the rental unit address, and has provided a Canada Post cash register receipt bearing that date and Registered Domestic Customer Receipt addressed to the tenant. The landlord's agent advised that the package was returned unclaimed on September 10, 2018, and the tenant still resides in the rental unit.

The *Residential Tenancy Act* provides for service of a hearing package by registered mail, and specifies that documents served in that manner are deemed to have been served 5 days after mailing. I find that the tenant has been served in accordance with the *Residential Tenancy Act*, on August 7, 2018.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on March 1, 2012 and the tenant still resides in the rental unit. Rent is subsidized and is recalculated on July 1 of each year. Currently, the tenant's share is \$451.00 per month which was decreased from \$488.00 per month effective July 1, 2018, and there are currently arrears totaling \$2,525.00. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail on April 12, 2018, and a copy has been provided for this hearing. It is dated April 12, 2018 and contains an effective date of vacancy of April 28, 2018 for unpaid rent in the amount of \$4,322.00 that was due on April 1, 2018. The landlord has also provided a copy of a Canada Post cash register receipt bearing the date of April 12, 2018 as well as a Registered Domestic Customer Receipt addressed to the tenant.

The tenant made some payments toward rent since the issuance of the notice to end the tenancy, particularly: \$1,500.00 on April 21, 2018; \$550.00 on May 16, 2018; and \$2,076.00 on September 4, 2018. The tenant has not served the landlord with an Application for Dispute Resolution disputing the notice to end the tenancy, and the landlord seeks an Order of Possession, a monetary order for unpaid rent totaling \$2,525.00, recovery of the \$100.00 filing fee, and an order permitting the landlord to keep the \$400.00 security deposit in partial satisfaction.

### Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent in full or dispute the notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I am satisfied that the tenant was served with the Notice by registered mail on April 12, 2018, which is deemed to have been served 5 days later, or April 17, 2018. The tenant did not pay the rent in full but paid a portion within that 5 day period. The landlord's agent testified that the tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy is changed to the nearest date that complies with the *Act* to April 27, 2018, and that date has passed, I grant the Order of Possession on 2 days notice to the tenant.

I also accept the undisputed testimony of the landlord's agent that the tenant is in arrears of rent the sum of \$2,525.00, calculated as follows:

DATE	AMOUNT DUE	AMOUNT PAID	AMOUNT OWED
April 1, 2018	\$4,322.00		\$4,322.00
April 21, 2018		\$1,500.00	\$2,822.00
May 1, 2018	\$488.00		\$3,310.00
May 16, 2018		\$550.00	\$2,760.00
June 1, 2018	\$488.00		\$3,248.00
July 1, 2018	\$451.00		\$3,699.00
August 1, 2018	\$451.00		\$4,150.00
September 1, 2018	\$451.00		\$4,601.00
September 4, 2018		\$2,076.00	\$2,525.00

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

I order the landlord to keep the \$400.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlord for the difference totaling \$2,225.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further order the landlord to keep the \$400.00 security deposit, and I 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 \$2,225.00.

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: September 20, 2018

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Residential Tenancy Branch