



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, OPC, MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55;
- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant and landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The tenant confirmed receipt of the landlord's application and evidence for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the application and evidence.

### Preliminary Issue – Amendment of Landlord's Application

The landlord confirmed that she wished to amend the landlord's application to remove the claim for July 2018 rent and add August and September 2018 rent in the amended amount of \$2,100.00. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if he did not pay the rent or vacate the rental unit to permit the landlord to re-rent the unit. Based on this undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to remove July rent of \$1,050.00 and include a monetary claim for August and September unpaid rent of \$2,100.00.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on October 1, 2017 on a fixed term until September 30, 2018. Rent in the amount of \$1,000.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$500.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The tenant confirms receipt of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") on July 11, 2018 by way of posting. The 10 Day Notice was issued for non-payment of July rent in the amount of \$1,050.00. The parties agreed that July rent arrears in the amount of \$1,050.00 was paid by the tenant on July 17, 2018.

The tenant confirms receipt of the 1 Month Notice to End Tenancy for Cause ("1 Month Notice") on August 23, 2018 by way of posting. The 1 Month Notice indicates an effective move-out date of September 23, 2018.

The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant is repeatedly late paying rent

The landlord seeks a monetary order of \$2,100.00 for unpaid rent from August to September 2018. The landlord claims that the tenant has not paid any rent for the above two months. The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

The tenant did not deny repeatedly paying his rent late and confirmed he owes rent in the amount stated by the landlord. The tenant attributed the most recent non-payment of rent to issues with his pay from his employer.

### Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not file an application, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the 1 Month Notice before me, I find that the tenant was served with an effective notice. Although the tenant participated in the hearing and verbally disputed the 1 Month Notice, the tenant did not file an application to dispute the notice. As the tenant did not file an application to dispute the notice within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must move out of the unit.

Subsection 47(2) of the *Act* permits a landlord to set an effective date to end the tenancy, at the earliest, the later of one month after the notice is received and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Pursuant to subsection 47(2), the earliest effective date for the 1 Month Notice would be September 30, 2018. The landlord has set an effective date in the 1 Month Notice of September 23, 2018. This effective date is too early. Pursuant to section 53 of the *Act*, the effective date of the 1 Month Notice is corrected to September 30, 2018. Therefore I find the landlord is entitled to an order of possession effective September 30, 2018 at 1:00 p.m.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$1,050.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from August to September 2018. Therefore, I find that the landlord is entitled to \$2,100.00 in rent.

Although the landlord applied for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, I find this portion of the landlord's claim was made in error. Upon review of the landlord's application it becomes

evident that the landlord made two claims for the filing fee, one under the above claim and one under the filing fee recovery. For this reason I dismiss the landlord's claim for a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, without leave to reapply.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$500.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,600.00. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,700.00.

### Conclusion

I grant an order of possession to the landlord effective **September 30, 2018 at 1:00 p.m.**

I issue a monetary order in the landlord's favour in the amount of \$1,700.00.

The landlord's claim for a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, is dismissed without leave to reapply.

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 27, 2018

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Residential Tenancy Branch