



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: FFL, MNRL-S, OPR

### **Introduction**

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. An Order for Possession for cause
- b. A Monetary Order in the sum of \$4400 for non-payment of rent.
- c. An Order to retain the security deposit.
- d. An Order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on September 15, 2018. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the Tenant by mailing, by registered mail on September 27, 2018 to the forwarding address provided by the Tenant. With respect to each of the applicant's claims I find as follows:

### **Issue(s) to be Decided**

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The parties entered into an oral tenancy agreement for the rental of the rental unit that was to start of the 15<sup>th</sup> day of August 2018. The rent was \$2200 per month payable in advance on the 15<sup>th</sup> day of each month. The tenant paid a security deposit of \$1100 on or about August 8, 2018.

The tenant testified she was not able to move until the 15<sup>th</sup> of August. Upon moving in she discovered that Fortis Gas refused to connect the gas for her because the previous tenant failed to pay a bill. She further testified the rental property was a mess and was previously used as a grow house.

The tenant failed to pay the rent for the period August 15, 2018 to September 14, 2018 and September 15, 2018 to October 14, 2018.

The tenant testified she never moved in. However, she removed all of her belongings by September 30, 2018.

The landlord testified he re-rented the rental unit and has received rent for all of October from a third party. .

#### Analysis - Order of Possession:

It is no longer necessary to consider the application for an Order of Possession as the tenant has vacated the rental unit and the landlord has regained possession.

#### Analysis - Monetary Order and Cost of Filing fee

I determined the Tenant failed to pay the rent for the period August 15, 2018 to September 14, 2018 and the sum of \$2200 remains outstanding. Further she failed to pay the rent for the rental period September 15, 2018 to October 14, 2018.

The tenant submits she does not have to pay the rent because the landlord failed to ensure the Fortis gas was hooked up, the rental unit was in very poor condition and it was previously used as a grow operation. Section 26 of the Act provides as follows:

“Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

Section 45(3) provides as follows:

“Tenant's notice

45 (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.”

I do not accept the submission of the Tenant. Section 26(1) provides that the tenant must pay the rent when due unless she has obtained an order from an arbitrator permitting her to deduct it or she pays it for an emergency repair. While the Tenant has a right to end a tenancy where the landlord failed to comply with a material term she must give the landlord notice and a reasonable time to correct the situation. The tenant failed to give the landlord notice. Thus the tenancy is ongoing.

I determined the tenancy ended on September 30, 2018 after the tenant vacated the rental unit and the landlord regained possession. I determined the landlord is entitled to \$2200 for non-payment of rent for the period August 15, 2018 to September 14, 2018. I also determined the landlord is entitled to \$1100 for the period September 15, 2018 to September 30, 2018. I dismissed the claim for the period starting October 1, 2018 as the landlord re-rented the rental unit and he has not suffered a loss.

In summary I granted the landlord a monetary order in the sum of \$3300 plus the sum of \$100 in respect of the filing fee for a total of \$3400.

#### Security Deposit

I determined the security deposit plus interest totals the sum of \$1100. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$2300.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The tenant testified the rental unit was not satisfactory and the landlord failed to provide gas as he is required under the tenancy agreement. The Tenant must first file an Application for Dispute Resolution making these claims before they can be adjudicated. The parties were not able to reach a settlement.

**This decision is final and binding on the parties.**

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: November 02, 2018

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Residential Tenancy Branch