



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MND, MNSD, FFL

### Introduction

On September 8, 2018, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for damage to the rental unit; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord attended the teleconference hearing; however, the Tenant did not. The Landlord testified that he served the Tenant with the Notice of Dispute Resolution Proceeding, by posting it to the Tenant's door on September 17, 2018. An individual who identified themselves as Mr. B.K. attended the hearing and indicated that the Tenant will not be attending. Mr. B.K. stated that he is not an authorized person to represent the Tenant in the hearing. Mr. B.K. was dismissed from the hearing.

I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the Act and failed to attend.

The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

### Preliminary and Procedural Matters

Mr. B.K. attended the hearing and stated that the Tenant will not be attending due to her medical disability of autism. Mr. B.K. submitted that the Tenant wanted an adjournment for an unspecified time.

The Landlord was asked to respond regarding the request for an adjournment. The Landlord testified that the Tenant is supposed to have support services and

communication with her is difficult. The Landlord testified that he is not willing to wait and did not agree to an adjournment.

Since the Tenant, or an authorized person, did not attend the hearing; and after considering that the Landlord has issued two notices to end tenancy in July 2018, which were not disputed by the Tenant. I find that an adjournment would create a further delay and unreasonably prejudice the Landlord. The hearing proceeded.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matters to determine is whether or not the tenancy is ending. The Landlords claim for damage to the rental unit is dismissed with leave to reapply.

#### Issues to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recover the cost of the filing fee?

#### Background and Evidence

The Landlord testified that the tenancy began on May 1, 2012. Rent in the amount of \$780.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a \$375.00 security deposit and a \$200.00 pet damage deposit.

The Landlord issued a 1 Month Notice to End Tenancy for Cause dated July 5, 2018 ("the First Notice") by posting it on the Tenant's door on July 5, 2018. The reasons checked off by the Landlord within the Notice are:

- *Tenant is repeatedly late paying rent*
- *Breach of a material term of the tenancy agreement*

The Landlord issued another 1 Month Notice to End Tenancy for Cause dated July 24, 2018 ("the Second Notice") by posting it on the Tenant's door on July 24, 2018. The reason checked off by the Landlord within the Notice is:

- *Tenant is repeatedly late paying rent*

- *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/ property.*

The 1 Month Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice informed the Tenant that if an application to dispute the Notice is not filed within 10 days, they are presumed to accept the Notice and must move out of the rental unit on the effective date set out on page 1 of the Notice.

There is no evidence before me that that the Tenant made an application to dispute the First Notice or the Second Notice.

The Landlord testified that he issued the Tenant a Notice of Rent Increase on September 16, 2017, effective January 1, 2018. The Landlord testified that the Tenant has failed to pay the rent increase amount of \$30.00 owing since January 1, 2018. The Landlord provided a copy of the Notice of Rent Increase.

The Landlord testified that the Tenant owes \$270.00 in unpaid rent for the nine months from January to September 2018.

The Landlord seeks an order of possession effective at the end of November 2018 and a monetary order in the amount of \$270.00.

The Landlord is seeking to retain the security deposit in satisfaction of his claim for unpaid rent.

### Analysis

Section 47 (5) of the Act states that if a Tenant who has received a Notice under this section does not make an application for dispute resolution in accordance with subsection (4), the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant received both of the 1 Month Notices and did not apply to dispute the Notices, and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notices. The effective date of both notices is August 31, 2018.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective no later than 1:00 pm on November 30, 2018, after service on the

Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Landlord issued a legal rent increase and the Tenant has failed to pay the \$30.00 monthly increase in rent. I find that the Tenant owes the Landlord \$270.00 in unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord is owed the amount of \$370.00. I order that the Landlord can keep the amount of \$370.00 from the Tenant's security deposit in satisfaction of the unpaid rent and the cost of the hearing.

### Conclusion

The Tenant failed to attend the hearing. The Tenant did not apply to dispute the notices to end tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on August 31, 2018; the effective date of the Notices.

The Landlord is granted an order of possession effective at 1:00 pm on November 30, 2018, after service on the Tenant, and I order that the Landlord can keep \$370.00 from the Tenant's security deposit for unpaid rent and the cost of the hearing.

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 06, 2018

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Residential Tenancy Branch