



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM FFL

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord’s agent IK (“the landlord”) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to call witnesses, and to make submissions. The tenant did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled, plus an additional ten minutes, to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

This matter was initiated as a Direct Request Proceeding and was adjourned to a participatory hearing. The landlord testified that the Notice of Direct Request Proceeding was served on the tenant by personal service on November 19, 2018. In support of the service, the landlord provided a witnessed and signed proof of service of the Notice of Hearing and Application for Dispute Resolution. Based on the submissions of the landlord, and in accordance with sections 89 of the *Act*, I find that the tenant was duly served with the Notice of Direct Request Proceeding.

The landlord testified that the landlord served the Notice of Reconvened Hearing and the interim decision in this matter on the tenant by posting these documents on the tenant’s door on November 27, 2018. Pursuant to sections 88 and 90 of the *Act*, I find

the tenant was served with the Notice of Reconvened Hearing and the interim decision three days later, on November 30, 2018.

*Preliminary Matter: Request for Order of Possession*

The landlord testified the tenant vacated the unit the day before the hearing. Accordingly, the landlord withdrew the request for the order of possession.

I accordingly dismiss this claim without leave to reapply.

*Preliminary Matter: Request to Amend Application*

The landlord requested an amendment to the landlord's application to increase the monetary order requested to include additional outstanding rent for the month of December 2018. The landlord's application, submitted on November 15, 2018, pre-dated the due date for rent for December 2018 and as such the landlord's claim does not reflect outstanding rent and payments on rent received from the tenant. The landlord claimed \$2,300.00 in outstanding rent as of November 2018 as well as \$1,150.00 for rent for December 2018, for a total claim of \$3,450.00

The landlord also requested authorization to apply the security deposit paid by the tenant to the monetary award pursuant to section 72. The landlord testified the tenant paid a security deposit at the beginning of the tenancy of \$575.00 which the landlord still holds. The tenant has not provided authorization to the landlord to apply the security deposit to outstanding rent.

The landlord clarified his claim as follows:

ITEM	AMOUNT
Outstanding rent October 2018	\$1,150.00
Outstanding rent November 2018	\$1,150.00
Outstanding rent December 2018	\$1,150.00
(Less security deposit)	(\$575.00)
<b>TOTAL</b>	<b>\$2,875.00</b>

As well, the landlord requested reimbursement of the \$100.00 filing fee.

Section 4.2 of the *Rules of Procedure* provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as

when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include additional outstanding rent for the month of December 2018. I also find the tenant could reasonably anticipate the landlord would seek to apply the security deposit to any award for outstanding rent. I find the amendments would not be prejudicial to the tenant . Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to increase the landlord's overall claim for the balance of unpaid rent for the month of December 2018 to a total claim of \$3,450.00. I also amended the landlord's application to allow the landlord to apply the security deposit to any monetary award pursuant to section 72.

#### Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

#### Background and Evidence

The landlord testified that the parties executed a residential tenancy agreement dated April 2, 2018, indicating a monthly rent of \$1,150.00, due on the first day of each month with a security deposit of \$575.00. A copy of the tenancy agreement was provided by the landlord.

The landlord testified the tenant was personally served with the Ten-Day Notice on November 3, 2018 for \$2,300.00 in outstanding rent. The Notice contained an effective date of November 13, 2018. The Ten-Day Notice restated section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. the landlord testified that the tenant did not pay the outstanding rent or apply to dispute the Notice within five days from the date of service and

The landlord testified that the tenant has not paid any rent since September 1, 2018. and a balance of \$3,450.00 for outstanding rent is currently due.

### Analysis

I have reviewed all documentary evidence provided by the landlord. I find that the tenant was duly served with the Ten-Day Notice on November 3, 2018.

I accept the landlord's uncontradicted evidence and find that the tenant owes the landlord \$3,450.00 in outstanding rent. I grant the landlord a monetary award in this amount. I also find that the landlord is holding a security deposit in the amount of \$575.00 and is entitled to apply the security deposit to the monetary award under section 72.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the landlord served the tenant with the Ten-Day Notice on November 3, 2018 in accordance with section 88 of the *Act*. I find the tenant did not pay the overdue rent within the five days following service or apply for dispute resolution.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, November 13, 2018, requiring the tenant to vacate the rental unit by that date.

I therefore grant the landlord an order of possession effective two days after service.

Based on the uncontradicted evidence of the landlord, I grant the landlord a monetary award pursuant to section 67 for outstanding rent in the amount of \$3,450.00.

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee.

Further to section 72, I award the landlord authority to apply the security deposit to the monetary award.

In summary, I grant the landlord a monetary order for **\$2,975.00** calculated as follows:

ITEM	AMOUNT
Outstanding rent October 2018	\$1,150.00
Outstanding rent November 2018	\$1,150.00
Outstanding rent December 2018	\$1,150.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$575.00)
<b>TOTAL</b>	<b>\$2,975.00</b>

Conclusion

I grant the landlord a monetary order in the amount of **\$2,975.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

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: January 09, 2019

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Residential Tenancy Branch