



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFL, CNR, CNL-4M, PSF, LRE

### Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- cancellation of the Four Month Notice to End Tenancy, pursuant to section 49;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 62; and
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70.

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

#### Preliminary Issue- Tenant's Application

The tenant testified that he moved out of the subject rental property at the end of March 2019. I informed both parties at the hearing that I was dismissing the tenant's application because the tenancy ended, and the tenant's application is predicated on an ongoing tenancy.

#### Preliminary Issue- Landlord's Application

At the hearing I informed the landlord that I was dismissing his application for Orders of Possession since the tenant has already moved out of the subject rental property.

The landlord testified that he served the tenant with his application for dispute resolution via registered mail but could not recall on what date. The tenant testified that he received the landlord's application via registered mail but could not recall on what date. I find that the tenant was served with the landlord's application in accordance with section 89 of the *Act*.

#### Preliminary Issue- Amendment

The landlord testified that he served the tenant with his amendment on April 1, 2019 via registered mail. The landlord testified that he sent the amendment to the subject rental property. The tenant testified that he did not live at the subject rental property on April 1, 2019 and did not receive it. The landlord's amendment increased his monetary claim for unpaid rent.

I find that the landlord's amendment was not served on the tenant as he did not live at the subject rental property when the amendment was sent via registered mail.

Section 4.2 of the Rules states that 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, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$1,875.00

#### Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2012 and ended at the end of March 2019. Monthly rent in the amount of \$625.00 was payable on the first day of each month. A security deposit of \$312.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that he was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") and a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Four Month Notice"), on February 25, 2019. The 10 Day Notice was entered into evidence and has an effective date of March 7, 2019. The Four Month Notice was entered into evidence and has an effective date of July 1, 2019.

The landlord testified that he personally served the tenant with the 10 Day Notice on February 26, 2019 and posted the Four Month Notice on the tenant's door on February 25, 2019.

The tenant filed to dispute the Notices to end tenancy on March 3, 2019.

The tenant testified that approximately one week before the end of March 2019 he informed the landlord's father via telephone that he was moving out at the end of March 2019.

Both parties agree that the tenant did not pay rent for February, March or April 2019.

The tenant testified that he had an oral agreement with the landlord that he would not have to pay rent for December 2018, January 2019 or February 2019 and in exchange the tenant would complete renovations on the landlord's property. The tenant testified that the arrangement was that the parties would get together and discuss whether further work needed to be done on the landlord's property and if it did, the tenant would complete the work and not pay rent for March 2019. The tenant testified that he put in over 300 hours of work at the subject rental property. The tenant testified that the relationship between himself and the landlord deteriorated and they did not get together to discuss March 2019's rent. The tenant did not upload any documentary evidence in support of his testimony.

The landlord testified that he did not have the above agreement with the tenant. The landlord testified that the tenant helped him collect rent from other properties and in exchange the landlord did not increase his rent from Feb 1, 2012 to present. The landlord testified that the tenant did some work at the landlord's property and that the tenant was paid in cash for this work.

The tenant testified that he was not paid in cash for his work and that the only time the landlord gave him cash was a few months ago when he was having financial difficulties and the landlord's mother gave him a couple hundred dollars. The landlord testified that his mother did not give the tenant money for nothing and that this money was payment for the tenant's labour.

The landlord is seeking rent in the amount of \$625.00 per month for the months of February to April 2019 in the amount of \$1,875.00.

### Analysis

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

In this case the tenant claimed that he had a verbal agreement with the landlord that he did not have to pay rent for December to February and possibly March 2019 and in return he would complete renovations at the landlords' property. The landlord denied that such an agreement was in place. In the absence of corroborating evidence from the tenant, I find that the tenant has not proved, on a balance of probabilities, that the alleged agreement was in place. As such, I rely on the tenancy agreement to determine monthly rent payable. Upon review of the tenancy agreement, I find that rent in the amount of \$625.00 was due on the first day of each month.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$625.00 on the first day of each month from February to March 2018 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$1,250.00 in unpaid rent.

Sections 45(1)(a) and 45(1)(b) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is 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.

Section 50(1)(a) and 50(1)(b) of the *Act* states that if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

I find that the tenant did not provide the landlord with notice to end the tenancy in accordance with sections 45(1) or 50(1) of the *Act* because only approximately one week's verbal notice was provided to the landlord. I also find that the tenant did not move out in accordance with either of the Notices to End Tenancy because he moved out after the effective date in the 10 Day Notice and substantially before the effective date in the Four Month Notice.

Since the tenant did not provide notice to end the tenancy in accordance with section 45 of the *Act*, I find that the landlord is entitled to recover April 2019's rent in the amount of \$625.00 from the tenant.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
February to April rent	\$1,875.00
Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$1,975.00</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: April 16, 2019

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Residential Tenancy Branch