



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

OPR, MNR, FF, MNDC, ERP, RP, RR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 22, 2019. Both parties confirmed the tenant served the landlord by serving the landlord with the notice of hearing package in person on June 26, 2019. No evidence was submitted by the tenant. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act. Both parties are deemed served as per section 90 of the Act.

At the outset, the applications by both parties were clarified. Both parties confirmed their understanding of the applications for dispute filed. Both parties confirmed that as of the date of this hearing there are no rental arrears, but that the landlord still seeks an order of possession based upon the 10 Day Notice dated June 2, 2019 and recovery of the filing fee.

This hearing was cross referenced by the Residential Tenancy Branch for the tenant's application for dispute because "10 Day NTE may be related to TT request for reduced rent and

reimbursement for ERP. Discussions with both parties revealed by the tenant that her claims are unrelated to the landlord's 10 Day Notice, but were for compensation for the landlord failing to comply with a previous order (noted on the cover of this decision). The tenant stated she was surprised that the hearing was scheduled for the same time as the landlord's application. Both parties were informed that the hearing shall proceed on the landlord's application for an order of possession and request for recovery of the filing fee. If time permitted and a finding made against the tenant, the tenant's request for compensation would be heard or adjourned to a separate hearing. After 64 minutes, both issues are addressed in this decision.

#### Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for recovery of the filing fee?

Is the tenant entitled to an order for repairs, a reduction in rent, a monetary order for money owed or compensation and recovery of the cost of emergency repairs?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Neither party provided any details of the tenancy relationship.

Both parties confirmed that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent dated June 2, 2019 (the 10 Day Notice) by placing it in the tenant's mailbox on June 2, 2019. The 10 Day Notice states that the tenant failed to pay rent of \$1,289.00 that was due on June 1, 2019 and provides for an effective end of tenancy date of June 12, 2019.

Both parties confirmed that the tenant did not pay June 2019 rent of \$1,189.00 until June 26, 2019. Both parties confirmed the monthly rent for June was \$1,289.00 and that there was an order in place for the tenant to deduct \$100.00 from the monthly rent if the landlord did not comply with an order to have a "certified and licenced professional" pest control to deal with a bed bug issue as per a decision dated April 25, 2019. Both parties confirmed that the landlord did not comply with that order. The landlord stated that after accepting the rent payment on June 26, 2019, the landlord gave verbal notice that he was still seeking an end to the tenancy. Discussions with both parties also confirmed that the landlord served another 10 Day Notice for July 2019 for Unpaid Rent. Both parties confirmed that as of the date of this hearing there are no rental arrears owed by the tenant.

The landlord stated that he now only seeks an order of possession for unpaid rent and recovery of the \$100.00 filing fee. The landlord stated that he accepted late rent payment for June 2019 on June 26, 2019. The landlord stated that he provided verbal notice to the tenant after accepting the rent that he would still be seeking an end to the tenancy. The tenant disputed this claim stating that no notice has been given and that rental was paid to the landlord's spouse for June 2019. The landlord stated that he does not have any proof or evidence to support his claim that notice was given to the tenant.

During the hearing extensive discussions with both parties regarding the tenant's application were made. The tenant clarified that she wished to withdraw her request for repairs as there is an existing order from a decision dated April 25, 2019 outstanding in which she has been withholding \$100.00 from the monthly rent in exchange for the landlord in not complying with an order.

The tenant seeks a reduction in rent of \$500.00 for a pest (bed bug) problem over the last year. The tenant seeks a monetary claim of \$500.00 for compensation for dealing with a pest (bed bug) problem. The tenant seeks recovery of \$500.00 for the cost of emergency repairs for pest (bed bug) treatment expenses. The tenant clarified that all she wants is for the landlord to comply with the original order of April 25, 2019 and as such withdraws this portion her application. No further action is required at this time.

The landlord stated that he understands the tenant's claims and has confirmed that he has not complied with the April 25, 2019 order. The landlord provided testimony that he wanted to try and resolve the bed bug issue himself instead of hiring professional. The landlord stated that even if the Residential Tenancy Branch orders that the tenant be compensated a whole months' rent (currently \$1,321.00) for his non-compliance instead of \$100.00, the landlord will not comply with the order. During the hearing the landlord was cautioned for non-compliance of orders from the Residential Tenancy Branch. During the hearing an initial finding was made to increase the amount of compensation from the April 25, 2019 order for the landlord to have a certified licensed professional provide treatment for the bed bug issue by May 3, 2019 or the tenant would be allowed to withhold \$100.00 per month until the landlord complies. But upon review of the circumstances, I find that I cannot change the original order regarding compensation to the tenant if the landlord does not comply with the original order made. The tenant does have alternative options to have a "certified and licensed professional" pest control company attend and provide treatment for the bed bug issue. Although a verbal decision was made during the hearing, I now rescind that order. Both parties were advised of the tenant's options moving forward for pest control treatment.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, both parties confirmed that the landlord served the tenant with the 10 Day Notice dated June 2, 2019 by placing it in the tenant's mailbox on June 2, 2019. Both parties confirmed the contents of the 10 Day Notice in which the landlord claims that the tenant did not pay rent of \$1,289.00 by June 1, 2019. Both parties confirmed in their direct testimony that rent was paid by the tenant on June 26, 2019 of \$1,189.00 and allowing for a credit of \$100.00 for not complying with an order to have a "certified licensed professional" pest control technician treat the rental unit for bed bugs.

The landlord has claimed that he provided verbal notice to the tenant after accepting the late rent payment on June 26, 2019 that the landlord would still proceed with an end to the tenancy. The tenant disputed this claim stating that no such notice was given as the rent payment was received by the landlord's spouse and the named landlord was not present.

Policy Guideline #11, Amendment and Withdrawal of Notices states in part,

Use and Occupancy Only

Notice to End Tenancy

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) set out the requirements for giving a Notice to End Tenancy...

In determining if a person "should have known" particular facts, an arbitrator will consider whether a reasonable person would have known these facts in the same circumstances. In determining whether it is "reasonable in the circumstances" an arbitrator will look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice...

**The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given.** If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

**If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue.** Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only.
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties.

In this case, the landlord did not provide any formal written notice that rent was being accepted for "use and occupancy only". The landlord has claimed that he gave verbal notification to the tenant when the rental arrears were paid on June 26, 2019 by the tenant. The tenant provided undisputed evidence that the arrears were paid to the landlord's spouse as he was not present and the tenant has argued that no notice has been given by the landlord that rent was being accepted for use and occupancy only and that the landlord intended to still seek an end to the

tenancy. In this case, I prefer the evidence of the tenant over that of the landlord in that the tenant presented clear and concise evidence as to the payment of rental arrears and I find the tenant credible that the landlord failed to provide any notice that he was still seeking an end to the tenancy. As such, I find that the landlord by accepting the late payment of rent beyond the stated effective end of tenancy of the 10 Day Notice dated June 2, 2019 has reinstated the tenancy. The 10 Day Notice dated June 2, 2019 is set aside and cancelled. The tenancy shall continue.

### Conclusion

The landlord's application is dismissed.

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: August 09, 2019

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Residential Tenancy Branch