



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR (Tenant)  
                             FFL, MNRL-S, OPRM-DR (Landlord)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

Tenant T.L. filed the application June 22, 2019 (the “Tenant’s Application”). The Tenant applied to dispute a One Month Notice dated June 12, 2019.

Tenant T.L. filed an amendment dated July 18, 2019 disputing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 10, 2019 (the “10 Day Notice”).

The Landlords filed the application July 21, 2019 (the “Landlords’ Application”). The Landlords applied for an Order of Possession based on the 10 Day Notice, to recover unpaid rent and for reimbursement for the filing fee.

The Landlords filed an amendment July 26, 2019 increasing the amount claimed to \$4,400.00 and seeking to keep the security deposit towards unpaid rent.

The Landlords appeared at the hearing. Nobody appeared at the hearing for the tenants. I explained the hearing process to the Landlords. The Landlords provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Landlords testified that they received the hearing package for the Tenant’s Application but not Tenant T.L.’s evidence.

The Landlords testified as follows in relation to service. The tenants were served with hearing packages, including the amendment, and most of the evidence by registered mail sent to the rental unit July 26, 2019. Tenant T.L. lives at the rental unit. Tenant D.P. told the Landlords a month or two ago that she no longer lives at the rental unit.

The Landlords submitted photos of the packages with Tracking Number 1 and 2 on them. I looked these up on the Canada Post website which shows notice cards were left July 29, 2019 and August 04, 2019.

Section 89(1) of the *Residential Tenancy Act* (the “*Act*”) sets out the permissible forms of service for the Landlords’ Application and states:

89 (1) An application for dispute resolution...when required to be given to one party by another, must be given in one of the following ways:

...

(c) by sending a copy by registered mail to the address at which the person resides...

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant...[emphasis added]

I am not satisfied Tenant D.P. was served in accordance with section 89(1) of the *Act* given the hearing package was sent to the rental unit and I am not satisfied this was Tenant D.P.’s residence at the time given the comments of the Landlords. Nor is the rental unit Tenant D.P.’s forwarding address. Given I am not satisfied of service in relation to Tenant D.P., I have removed her from the style of cause.

Based on the undisputed testimony of the Landlords, evidence submitted and Canada Post website information, I find Tenant T.L. was served with the hearing package, amendment and evidence in accordance with sections 88(c) and 89(1)(c) of the *Act*. Tenant T.L. is deemed to have received the hearing package, amendment and evidence. I also find the Landlords complied with the Rules of Procedure (the “Rules”) in relation to the timing of service.

The Landlords testified that further evidence was served on Tenant T.L. in person at the rental unit August 03, 2019. The timing of this complied with rule 3.15 of the Rules but

not rule 3.14 of the Rules. I find this evidence admissible and note Tenant T.L. did not attend the hearing to take issue with the timing of service.

I also note Tenant T.L. would have been aware of this hearing as the Tenant's Application was scheduled for the same date and time.

As I was satisfied of service, I proceeded with the hearing in the absence of Tenant T.L.

I have not considered the evidence submitted by Tenant T.L. given she did not attend the hearing and present the evidence as required by rule 7.4 of the Rules.

Rule 7.3 of the Rules states that an arbitrator can dismiss an Application for Dispute Resolution without leave to re-apply if a party fails to attend the hearing.

Given Tenant T.L. did not appear at the hearing, I have no evidence before me as to the basis for the Tenant's Application. In the absence of evidence from Tenant T.L., the Tenant's Application is dismissed without leave to re-apply.

The Landlords were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the Landlords' documentary evidence and oral testimony. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the 10 Day Notice?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to keep the security deposit?
4. Are the Landlords entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlords, Tenant T.L. and Tenant D.P. in relation to the rental unit. The tenancy started November 27, 2018 and is for a fixed term ending November 30, 2019. Rent is \$2,200.00 per month due on the first day of each month. The tenants paid a security deposit of \$1,100.00. The parties, other than Landlord K.W., signed the agreement. Landlord K.W. confirmed he is a co-owner of the rental unit.

The 10 Day Notice states the tenants failed to pay \$2,200.00 in rent due July 01, 2019. It is addressed to the tenants and refers to the rental unit. It is signed and dated by Landlord K.W. It has an effective date of July 21, 2019.

Landlord K.W. testified that he served both pages of the 10 Day Notice on Tenant T.L. by leaving it with an adult that resides with Tenant T.L. on July 10, 2019. The Landlords submitted a Proof of Service supporting this. It is signed by the adult who received the 10 Day Notice and a witness. The Landlords submitted an email from Tenant T.L. acknowledging she received the 10 Day Notice. Tenant T.L. filed the amendment indicting she received the 10 Day Notice July 10, 2019 and attaching a copy of it.

Landlord K.W. testified that Tenant T.L. has not paid any rent since the 10 Day Notice was issued. He testified that Tenant T.L. did not have authority under the *Act* to withhold rent.

The Landlords sought unpaid rent for July and August for a total of \$4,400.00.

The Landlords submitted emails from Tenant T.L. showing she had not paid July rent by July 06, 2019. The Landlords submitted bank records showing when rent had been paid in the past, June 11, 2019 being the last payment as of July 21, 2019.

### Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows landlords to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

...

Section 55(1) of the *Act* requires an arbitrator to issue an Order of Possession when a tenant has disputed a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

Based on the written tenancy agreement, I accept Tenant T.L. was obligated to pay \$2,200.00 for July rent by July 01, 2019. I accept the undisputed testimony of Landlord K.W. that Tenant T.L. did not have a right to withhold rent under the *Act*. There is no evidence before me that she did. I find Tenant T.L. was required to pay \$2,200.00 in rent by July 01, 2019 under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of the Landlords, emails from Tenant T.L. and bank records, I accept that Tenant T.L. failed to pay July rent. Given Tenant T.L. failed to pay rent as required, the Landlords were entitled to serve her with the 10 Day Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of Landlord K.W., Proof of Service and email from Tenant T.L., I find pursuant to section 71(2) of the *Act* that Tenant T.L. was sufficiently served with the 10 Day Notice on July 10, 2019. I also note Tenant T.L. must have received the 10 Day Notice as she disputed it.

Upon a review of the 10 Day Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

Tenant T.L. had five days from receipt of the 10 Day Notice to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of Landlord K.W. that Tenant T.L. never paid the outstanding rent.

Tenant T.L. disputed the 10 Day Notice in the amendment dated July 18, 2019. This was past the five-day time limit for disputing the Notice.

I find Tenant T.L. did not pay the outstanding rent, or dispute the 10 Day Notice, within the time limit set out in section 46(4) of the *Act*. Therefore, pursuant to section 46(5) of the *Act*, Tenant T.L. is conclusively presumed to have accepted that the tenancy ended July 21, 2019, the effective date of the 10 Day Notice. Tenant T.L. was required to vacate the rental unit by July 21, 2019.

I note that, even if Tenant T.L. disputed the 10 Day Notice within the five-day time limit, her dispute has been dismissed without leave to re-apply. The Landlords therefore would have been entitled to an Order of Possession pursuant to section 55(1) of the *Act* in any event.

I find the Landlords are entitled to an Order of Possession based on the 10 Day Notice. The Landlords asked that this be effective August 31, 2019.

I accept the undisputed testimony of the Landlords that July and August rent is currently outstanding for a total of \$4,400.00. The Landlords are entitled to a Monetary Order in this amount.

As the Landlords were successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, Tenant T.L. owes the Landlords \$4,500.00. The Landlords can keep the \$1,100.00 security deposit pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, I issue the Landlords a Monetary Order for \$3,400.00.

### Conclusion

The Tenant's Application is dismissed without leave to re-apply.

The Landlords are granted an Order of Possession effective at 1:00 p.m. on August 31, 2019. This Order must be served on Tenant T.L. and, if Tenant T.L. does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlords are entitled to monetary compensation in the amount of \$4,500.00. The Landlords can keep the \$1,100.00 security deposit. I issue the Landlords a Monetary Order for \$3,400.00. This Order must be served on Tenant T.L. and, if Tenant T.L. does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: August 15, 2019

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Residential Tenancy Branch