



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNR, OPR, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on July 22, 2019 for:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on July 25, 2019 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Are the Parties entitled to recovery of their filing fees?

### Background and Evidence

The Landlord states that the tenancy of the upper unit of the house started on March 1, 2006 with rent of \$1,500.00 payable on the first day of each month. At the outset of this

tenancy the Landlord collected \$750.00 as a security deposit. The Landlord states that in approximately January 2007 the Tenant took over the whole house for rent of \$2,200.00 payable on the first day of each month.

The Tenant states that the tenancy of the whole house started on March 2006 with rent of \$1,500.00 payable on the first day of each month. The Tenant agrees that the rent is currently \$2,200.00 payable on the first day of each month. The Tenant agrees that the Landlord is holding a security deposit of \$750.00.

The Parties agree as follows: On July 17, 2019 the Tenant was served with a 10-day notice to end tenancy for unpaid rent (the "Notice"). The Notice is signed by the Landlord and dated July 17, 2019. The Notice sets out the rental address and an effective move out date of July 27, 2019. The Notice is on the Residential Tenancy Branch (the "RTB") form. The Notice sets out unpaid rent of \$4,400.00 due June 1, 2019. No rents have been paid for June, July, August and September 2019. The Tenant has not moved out of the unit. A previous decision dated July 16, 2019 finds that the Tenant did not substantiate that the Landlord collected illegal rent increases during the tenancy.

The Tenant states that the rents have not been paid as deductions are being made for illegal rent increases. The Tenant states that it has applied for a judicial review of the previous decision dated July 16, 2019 but that the Landlord has not been served with any papers yet. The Tenant states that advice has been taken to wait for the outcome of this hearing and that no hearing dates on the matter has been set. The Landlord confirms that it has not heard anything about a judicial review. The Tenant provided no supporting evidence of claims made at the Supreme Court.

The Landlord seeks an order of possession effective September 31, 2019. The Landlord claims \$8,800.00 for unpaid rent from June to September 2019 inclusive.

### Analysis

Section 77(3) of the Act provides that a decision is final and binding on the parties. Section 58(2)(c) of the Act provides that if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless the dispute is linked substantially to a matter that is before the Supreme Court. Although the previous decision deals squarely with the issue of whether the Tenant is entitled to make a deduction from the rent, as the Tenant has not served the Landlord with any materials in relation to a review of that decision dated July 16, 2019 at the Supreme Court, as the Tenant has not provided supporting evidence of the application for the review of that decision and as the Landlord does not know about any judicial review, I find on a balance of probabilities that the Tenant has not substantiated that this current dispute is linked to a matter before the Supreme Court. As the previous decision finds that the Tenant has not substantiated that the Landlord has collected illegal rent increases, I find that the matter of the Tenant's entitlement to make deductions from rents due has already been decided and I may not consider the Tenant's evidence of illegal rent increases for the purpose of determining the validity of the Notice in this dispute.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence that no rents have been paid for June 2019 I find that the Notice is valid, and I dismiss the Tenant's claim to cancel the Notice. As the Tenant's claim to cancel the Notice has not

been successful I decline to award recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety. As the Notice is correct in form and content I find the Landlord entitled to an order of possession as requested for September 30, 2019

Based on undisputed evidence that the rents due for June to September 2019 have not been paid, I find that the Landlord has substantiated an entitlement to **\$8,800.00**. As the Landlord has been successful with its claims I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$8,900.00**. Deducting the security deposit plus zero interest of **\$750.00** leaves **\$8,150.00** owed to the Landlord.

#### Conclusion

The Tenant's application is dismissed.

**I grant** an Order of Possession to the Landlord effective 1:00 p.m. on September 30, 2019.

**I order** that the Landlord retain the **deposit** and interest of \$750.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$8,150.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: September 27, 2019

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Residential Tenancy Branch