



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DYNAMIC PROPERTY MANAGEMENT  
LTD. HOWE SOUND CHRYSLER  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OPRM-DR, FFL

### Introduction

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

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

- an Order of Possession for unpaid rent pursuant to section 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.

This hearing also dealt with the tenant's application identifying the two landlords as identified above pursuant to section 46 of the *Residential Tenancy Act* (the *Act*) to cancel the 10 Day Notice. At the hearing and with the agreement of the parties in attendance, I made the necessary changes to the landlord's names to align with those identified by the landlords in their application.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Tenant DV (the tenant) confirmed that they received the landlord's 10 Day Notice posted on the tenant's door by the landlord's representatives on July 4, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As Landlord HG (the landlord) who worked for the corporate landlord identified in these applications confirmed that they received a copy of the tenant's dispute resolution

hearing package shortly after July 9., 2019, I find that the landlords were duly served with this package in accordance with section 89 of the *Act*. As the tenant confirmed that they received a copy of the landlord's dispute resolution hearing package and written evidence sent to the tenant by registered mail on July 22, 2019, I find that the tenant was duly served with these documents in accordance with sections 88 and 89 of the *Act*. Since the tenant did not provide the landlords with copies of the tenant's written evidence, I advised the parties that I would be unable to consider the tenant's written evidence submissions.

At the hearing, the landlord gave undisputed sworn testimony supported by written evidence that they sent copies of the dispute resolution hearing package and their written evidence to the other two Respondents identified as tenants in the landlords' application by registered mail on July 22, 2019. The landlord said that both of these packages sent to the rental unit address were returned as unclaimed. I noted that Respondent AM never signed the Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlord, was not identified as a tenant on that Agreement, and did not reside at the rental unit where the landlord sent the package when the landlord sent the registered mail package to them at that address on July 22, 2019. As any one of these deficiencies would disqualify the landlord from obtaining any form of order against Respondent AM, I advised the parties that I could not consider Respondent AM a party to these proceedings or any order that would be issued with respect to these applications.

The landlord also testified that the corporate tenant identified as a Respondent in the landlord's application has been purchased by another company and no longer exists, although a representative of that corporate tenant did sign the Agreement and the corporate tenant was identified as a tenant on the Agreement. Since the only address the landlord had for the corporate tenant was that of the rental unit, I find pursuant to sections 71(2)(b) and (c), and 90 of the *Act*, that the corporate tenant was sufficiently served with the dispute resolution hearing package and the written evidence package for the purposes of the *Act* on July 27, 2019, the fifth day after their registered mailing.

Both parties agreed that the tenant has paid outstanding rent for July 2019, and that the landlord has accepted payments from the tenant for August and September 2019 for use and occupancy only and not to reinstate this tenancy. The landlord withdrew the application for a monetary award of \$1,875.00, the monetary amount cited in the landlord's application. This portion of the landlord's application is hereby withdrawn.

Although the tenant had made an oral request to the Residential Tenancy Branch (the RTB) and a very late written request for an adjournment due a recent death in the tenant's family, the tenant did call into the hearing and was prepared to proceed with this hearing.

#### Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

On July 30, 2018 and August 17, 2018, representatives of the corporate landlord, the corporate tenant and the tenant signed the Agreement. The tenancy began on July 1, 2018 and was to expire on December 31, 2018. When the initial term ended, the tenancy has continued on a month-to-month basis. Monthly rent is set at \$1,875.00, payable in advance on the first of each month. The landlord testified that they continue to hold a \$937.50 security deposit and a \$937.50 pet damage deposit for this tenancy.

The 10 Day Notice sought an end to this tenancy for unpaid rent of \$1,875.00, that became owing as of July 1, 2019. The landlord gave undisputed sworn testimony that there have been many late payments of rent during the course of this tenancy, although the rent account is now current.

#### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. The landlord agreed to withdraw the 10 Day Notice of July 4, 2019.
2. The landlord agreed to remove the corporate tenant named in the landlord's application from the Agreement, and agreed to no longer hold representatives of

that now defunct corporate tenant responsible for anything related to this tenancy.

3. The tenant agreed to pay all future monthly rent payments when it is due by the end of the day on the first of each month.
4. Both parties agreed that in the event that the tenant fails to pay monthly rent on time by the end of the day on the first of each month for the next twelve months that the landlord will prepare and sign a Mutual Agreement to End Tenancy, which the tenant agreed to sign. This Mutual Agreement to End Tenancy would require the tenant to vacate the rental premises at a mutually suitable time not less than one week after the Mutual Agreement is prepared by the landlord and provided to the tenant for signature.
5. The tenant agreed to pay the landlord \$100.00 before October 1, 2019, to reimburse the landlord for the landlord's filing fee for the landlord's application for dispute resolution.
6. Both parties agreed that this settlement agreement constituted a final and binding resolution of these applications and that they did so of their own free will and without any element of force or coercion having been applied.

### Conclusion

The landlord's application for a monetary award for unpaid rent is withdrawn.

To give legal effect to the settlement agreement reached between the parties, I set aside the landlord's 10 Day Notice issued on July 4, 2019, which is no longer of any continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

To give legal effect to the commitments of the parties outlined in the above- noted Clause 4 of their settlement agreement, I order the tenant to sign any Mutual Agreement to End Tenancy provided to the tenant by the landlord over the next twelve months created in the event that the tenant fails to pay monthly rent by the end of the day on the first of the month, provided that the tenant is given at least one week to vacate the rental unit after the landlord has provided the Mutual Agreement to End Tenancy to the tenant.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the corporate landlord's favour in the amount of \$100.00. I deliver this Order to the corporate landlord in support of the above agreement for use in the

event that the tenant does not abide by the terms of the above settlement. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible after any failure to abide by the terms of this portion of their agreement. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I also order that the corporate tenant's name be removed from the Agreement and order that the now defunct corporate tenant is no longer under any legal rights or obligations with respect to this tenancy.

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: September 06, 2019

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Residential Tenancy Branch