



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, OLC, MT (Tenants)  
                             FFL, OPC, 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.

The Tenants filed their first application July 09, 2019 (the “Tenants’ First Application”). The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated April 15, 2019 (the “One Month Notice”). The Tenants sought more time to file the dispute. The Tenants sought an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

The Tenants filed their second application August 07, 2019 (the “Tenants’ Second Application”). The Tenants applied to dispute the One Month Notice. The Tenants sought to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 25, 2019 (the “10 Day Notice”). The Tenants sought an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

The Landlord filed their first application July 12, 2019 (the “Landlord’s First Application”). The Landlord applied for an Order of Possession based on the One Month Notice. The Landlord sought reimbursement for the filing fee.

The Landlord filed their second application August 07, 2019 (the “Landlord’s Second Application”). The Landlord applied for an Order of Possession based on the 10 Day Notice. The Landlord sought to recover unpaid rent. The Landlord sought reimbursement for the filing fee.

The Agents appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Agents who did not have questions in this regard. The Agents provided affirmed testimony.

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

Agent W.E. advised that the hearing package for the Landlord's First Application was not served on the Tenants. Given this, I dismissed this application with leave to re-apply.

Agent W.E. testified that the hearing packages and evidence for the Landlord's Second Application were sent to the Tenants at the rental unit by registered mail on August 16, 2019. Agent W.E. testified that the Tenants resided at the rental unit when the packages were sent. The Landlord had submitted Customer Receipts for the packages with Tracking Number 1 and 2 on them. I looked these up on the Canada Post website. The package with Tracking Number 1 was delivered and signed for by Tenant A.M. August 21, 2019. The package with Tracking Number 2 was unclaimed and returned to the sender after two notice cards were left regarding it.

Based on the undisputed testimony of Agent W.E., Customer Receipts and Canada Post website information, I find the Tenants were served with the hearing package and evidence for the Landlord's Second Application in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post website information, I find Tenant A.M. received the package August 21, 2019. I find the timing of service in relation to Tenant A.M. sufficient. Tenant S.M. is deemed to have received the package August 21, 2019 pursuant to section 90(a) of the *Act*. I find the timing of service in relation to Tenant S.M. sufficient. I note that the Landlord complied with rule 3.1 of the Rules of Procedure (the "Rules") in relation to the timing of service.

I also note the Tenants would have been aware of the hearing as the Tenants' First and Second Application were scheduled for the same date and time.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants.

Agent W.E. confirmed receipt of the hearing packages for the Tenants' First and Second Application. She testified that she did not receive the Tenants' evidence.

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 the Tenants did not appear at the hearing, I have no evidence before me as to the basis for the Tenants' First or Second Application. In the absence of evidence from the Tenants, the Tenants' First and Second Application are dismissed without leave to re-apply.

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

I have not considered the Tenants' evidence as they did not attend the hearing and present the evidence as required by rule 7.4 of the Rules.

#### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?
2. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice or One Month Notice pursuant to section 55(1) of the *Act*?
3. Is the Landlord entitled to recover unpaid rent?
4. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started January 11, 2019 and was for a fixed term ending July 31, 2019. The tenancy then became a month-to-month tenancy. Rent is \$800.00 per month due on or before the first day of each month. The agreement states that late rent is subject to \$5.00 per day up to \$25.00. The Tenants paid a \$400.00 security deposit. The agreement is signed by the Tenants and Landlord's agent.

Agent W.E. sought to keep the security deposit towards unpaid rent.

The 10 Day Notice states the Tenants failed to pay \$825.00 in rent due July 01, 2019. It does not have an effective date.

The One Month Notice has the rental unit address under "Tenant Address"; however, under the box stating, "NOTICE TO END TENANCY: I, the landlord, am hereby giving you one month's notice to move out of the rental unit...located at..." the Landlord has entered the Landlord's address and not the rental unit address.

Agent W.E. testified that the Tenants have not paid rent since being issued the 10 Day Notice. Agent W.E. testified that the Tenants currently owe \$2,400.00 in rent for July to September. Agent W.E. asked to amend the Landlord's Second Application to reflect the full amount outstanding. Agent W.E. testified that the 10 Day Notice refers to \$825.00 because of the late fees. Agent W.E. testified that the Tenants did not have authority under the *Act* to withhold rent.

### Analysis

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove they are entitled to an Order of Possession based on the 10 Day Notice or One Month Notice.

In order to be effective, a notice to end tenancy must comply with section 52 of the *Act* which states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy...and
- (e) when given by a landlord, be in the approved form.

[emphasis added]

The 10 Day Notice does not have an effective date. Therefore, it does not comply with section 52 of the *Act* and is not an effective notice to end tenancy. Given this, I cancel the 10 Day Notice and decline to issue an Order of Possession based on it.

The One Month Notice does not include the rental unit address under the box stating "NOTICE TO END TENANCY: I, the landlord, am hereby giving you one month's notice to move out of the rental unit...located at..." I find this is the most important place on the One Month Notice to include the rental unit address as it is stating that the Tenants must move out of that address. I am not satisfied the One Month Notice complies with section 52 of the *Act*. Given this, I cancel the One Month Notice and decline to issue an Order of Possession based on it.

In relation to unpaid rent, 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 7 of the *Act* states that, if "a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the other for damage or loss that results."

Based on the written tenancy agreement, I find the Tenants were obligated to pay \$800.00 in rent per month on or before the first day of each month. I accept the undisputed testimony of Agent W.E. that the Tenants did not have a right to withhold rent under the *Act*. There is no evidence before me that they did. I find the Tenants were required to pay \$800.00 for each of July, August and September no later than the first day of each month pursuant to section 26(1) of the *Act*.

I accept the undisputed testimony of Agent W.E. that the Tenants did not pay rent for July, August or September and that \$2,400.00 in rent is currently outstanding. The Landlord is entitled to recover this amount.

The Landlord has sought \$25.00 for late fees in the Landlord's Second Application.

The tenancy agreement states that late rent is subject to \$5.00 per day up to \$25.00. Section 7 of the *Residential Tenancy Regulation* states:

7 (1) A landlord may charge any of the following non-refundable fees...

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent...

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have accepted that the Tenants failed to pay rent for July and therefore accept that July rent was paid late. The tenancy agreement states that this will incur a fee of \$5.00 per day up to \$25.00. The Landlord is entitled to recover the \$25.00.

As the Landlord was partially successful, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to monetary compensation in the amount of \$2,525.00. Pursuant to section 67 of the *Act*, I award the Landlord a Monetary Order in this amount. I have awarded a Monetary Order for the full amount owing rather than deducting the security deposit because the tenancy is continuing at this point.

### Conclusion

The 10 Day Notice and One Month Notice are cancelled. I decline to issue the Landlord an Order of Possession based on either notice to end tenancy. The tenancy will continue until ended in accordance with the *Act*.

The Landlord is entitled to monetary compensation in the amount of \$2,525.00. I issue the Landlord a Monetary Order in this amount. This Order must be served on the Tenants and, if the Tenants do 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: September 11, 2019

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Residential Tenancy Branch