



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

FFL OPRM-DR CNR FFT LAT LRE OLC PSF RP

### Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$26,000.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s for:

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:12 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord’s agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord’s agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant was served the notice of dispute resolution form and supporting evidence package via registered mail on July 21, 2019. The landlord's agent provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on July 26, 2019, five days after the landlord mailed it, in accordance with sections 88, 89 and 90 of the Act.

### **Issue(s) to be Decided**

Is the landlord entitled to:

- an Order of Possession;
- a monetary order for unpaid rent in the amount of \$26,000.00; and
- recover the filing fee for this application from the tenant?

Is the tenant entitled to:

- an order that the landlord to make repairs to the rental unit;
- the cancellation of the Notice;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement;
- change the locks to the rental unit; and
- recover the filing fee for this application from the landlord?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord's agent, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting January 2, 2019. Monthly rent was \$13,000.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$6,500.00.

In June 2019, the parties attended an arbitration, following which the arbitrator granted the landlord an order of possession, and a monetary order in the amount of \$29,100.00, representing compensation for rental arrears for part of March, and all of April and May, 2019, plus the landlord's filing fee. The arbitrator ordered that the landlord may keep the security deposit in partial satisfaction of that amount.

The landlord's agent testified that the tenant refused to vacate the rental unit following the arbitrator's decision.

He testified that the tenant has not paid any rent for the months of June or July 2019, which amounts to rental arrears of \$26,000.00.

The landlord's agent testified that he served the tenant with the Notice for \$26,000.00 in unpaid rent on July 4, 2019 by registered mail (the tracking number of which is reproduced on the cover of this decision). The Notice has an effective date of July 16, 2019.

The landlord's agent testified that the tenant was removed from the rental unit on July 29, 2019 by a court bailiff, and that she no longer resides at the rental unit.

As such, the landlord's agent testified that the landlord is no longer seeking an order of possession.

### **Analysis**

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

By failing to attend the hearing and failing to present any evidence or make any submissions on the merits of her application, I find that the tenant has failed to discharge her evidentiary burden. As such, I dismiss all parts of the tenant's application except the portion where she applies to have the Notice cancelled. In such applications, the onus is reversed, and the landlord must prove that the Notice was validly issued.

I find that the Notice is deemed served on the tenant on July 9, 2019, five days after its mailing.

I find that the tenant as obligated to pay monthly rent in the amount of \$13,000.00, as established in the tenancy agreement. I accept the landlord's agent's uncontroverted evidence that the tenant remained in the rental unit until July 29, 2019.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$26,000.00, comprised of the balance of unpaid rent owed by July 1, 2019. I therefore find that the Notice is valid. As such, I dismiss the tenant's application to cancel the Notice.

Section 7 of the Act states:

**Liability for not complying with this Act or a tenancy agreement**

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Based on the foregoing, I find that the landlord is entitled to a monetary order in the amount of \$26,000.00, representing compensation for unpaid rent for June and July 2019.

As the landlord is no longer seeking an order of possession, I dismiss that portion of his application.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee for this application from the tenant.

**Conclusion**

I dismiss the tenant's application without leave to reapply.

Pursuant to sections 67 and 72 of the Act, I find that the landlord is entitled to a monetary order in the amount of \$26,100.00 for unpaid rent, and for the recovery of the filing fee for this application. Should the tenant fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: September 13, 2019

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Residential Tenancy Branch