



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUMITA HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

This hearing originated as a direct request proceeding. A participatory hearing was ordered in an Interim Decision dated August 29, 2019. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:44 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's manager (the "manager") 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 manager and I were the only ones who had called into this teleconference.

The manager testified that the tenant was served with the Notice of Reconvened Hearing and the Interim Decision via registered mail on August 30, 2019. The manager verbally provided the Canada Post Tracking number in the hearing to prove this registered mailing. The tracking number is located on the cover page of this decision. I find that the tenant was deemed served with the Notice of Reconvened Hearing and Interim Decision on September 4, 2019, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

### Preliminary Issue- Amendment

The landlord's original application claimed unpaid rent in the amount of \$1,760.00. Since filing for dispute resolution, the manager testified that the amount of rent owed by the tenant has increased to \$3,100.00.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$3,100.00.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the manager, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The manager provided the following undisputed testimony. Tenant K.T. entered into a rental agreement with landlord S.W.L. on May 1, 2004. In 2013 the landlord purchased the rental property from landlord S.W.L. In January of 2019 tenant K.T. passed away

and the landlord was approached by the tenant who informed the landlord that he lived with the deceased tenant and wanted to continue to reside at the subject rental property. The landlord agreed and the tenant signed the original tenancy agreement between landlord S.W.L. and tenant K.T. The aforementioned tenancy agreement was entered into evidence. Monthly rent in the amount of \$820.00 is payable on the first day of each month.

The manager testified that tenant has fallen behind on his rent payments. The landlord testified to the state of the tenant's account as follows:

<b>Month</b>	<b>Rent Due</b>	<b>Amount Paid</b>	<b>Balance Due</b>
April 2019	\$820.00	\$645.00	\$275.00
May 2019	\$820.00	\$620.00	\$475.00
June 2019	\$820.00	\$100.00	\$1,195.00
July 2019	\$820.00	\$300.00	\$1,715.00
August 2019	\$820.00	\$1,075.00	\$1,460.00
September 2019	\$820.00	\$0.00	\$2,280.00
October 2019	\$820.00	\$0.00	\$3,100.00

The landlord entered into evidence a tenant ledger from January to August 2019 confirming the manager's testimony about outstanding rent from April to August 2019, with one exception. The \$300.00 rent payment made by the tenant in July is not in the tenant's ledger. The manager testified that the tenant usually pays his rent by cheque but he sent July's \$300.00 rent payment in by e-mail transfer and it was not properly assigned to the tenant's account at the time she entered the tenant's ledger into evidence. The manager testified that since she entered the tenant ledger into evidence in August of 2019, he has not paid rent for September or October 2019. The landlord testified that August's rent payment of \$1,075.00 was paid on August 9, 2019.

The landlord testified that on August 7, 2019 a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of August 17, 2019 (the "10 Day Notice") was posted on the tenant's door. A witnessed proof of service document was entered into evidence. The 10 Day Notice states that the tenant failed to pay rent in the amount of \$1,075.00 that was due on August 1, 2019. The manager testified that the amount of rent stated on the 10 Day Notice as outstanding was incorrect and should have read \$2,535.00.

### Analysis

Section 46(1) of the *Act* states that 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.

Section 46(4) states that if within 5 days after receiving a notice under this section, the tenant pays the overdue rent, the notice has no effect.

I find that the landlord served the 10 Day Notice on the tenant pursuant to section 88 of the *Act*. I find that two days after the 10 Day Notice was posted on the tenant's door, the tenant paid the amount stated on the 10 Day Notice as outstanding. While the amount stated as outstanding may have been incorrect, I find that the landlord is not entitled to benefit from its own error. I find that since the amount stated as owing was paid within five days from the service of the 10 Day Notice, the 10 Day Notice is cancelled and of no force or effect.

I note that there is a mathematical error in the landlord's ledger for April 2019. In the ledger it states that rent in the amount of \$820.00 was due and \$645.00 was paid, leaving a balance of \$275.00 owing.  $\$820.00 - \$645.00 = \$175.00$ . I find that only \$175.00 was owed for April 2019.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$820.00 on the first day of each month which he failed to do. Based on the undisputed testimony of the manager and the tenant ledger entered into evidence, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord 3,000.00 in unpaid rent from April to October 2019 as follows:

Month	Rent Due	Amount Paid	Balance Due
April 2019	\$820.00	\$645.00	\$175.00
May 2019	\$820.00	\$620.00	\$375.00
June 2019	\$820.00	\$100.00	\$1,095.00
July 2019	\$820.00	\$300.00	\$1,615.00
August 2019	\$820.00	\$1,075.00	\$1,360.00
September 2019	\$820.00	\$0.00	\$2,180.00
October 2019	\$820.00	\$0.00	\$3,000.00

As the landlord was successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

The 10 Day Notice is cancelled and of no force or effect.

I issue a Monetary Order to the landlord in the amount of \$3,100.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: October 24, 2019

---

Residential Tenancy Branch