



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, OPRM-DR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 13, 2019 (the “Application”). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 02, 2019 (the “Notice”). The Landlord also sought to recover unpaid rent and reimbursement for the filing fee.

The Landlord and Tenant appeared at the hearing. The hearing process was explained to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant asked for an interpreter at the outset of the hearing. I advised the Tenant that he was responsible for having an interpreter attend if required. I gave the Tenant an opportunity to call someone to call into the hearing and assist. The Tenant did not have someone call into the hearing and said he would continue without assistance.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence and no issues arose.

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

### Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the Notice?
2. Are the Landlords entitled to a Monetary Order for unpaid rent?
3. Are the Landlords entitled to reimbursement for the filing fee?

### **Issue 1: Are the Landlords entitled to an Order of Possession based on the Notice?**

### Settlement

During the hearing, I raised the possibility of settlement pursuant to section 63(1) of the *Residential Tenancy Act* (the “Act”) which allows an arbitrator to assist the parties to settle the dispute.

I explained the following to the parties. Settlement discussions are voluntary. If they chose not to discuss settlement that was fine, I would hear the matter and make a final and binding decision in the matter. If they chose to discuss settlement and did not come to an agreement that was fine, I would hear the matter and make a final and binding decision in the matter. If they did come to an agreement, I would write out the agreement in my written decision and make any necessary orders. The written decision would become a final and legally binding agreement and neither party could change their mind about it later.

I answered questions about the above. The parties agreed to discuss settlement.

The parties were able to agree on ending the tenancy. However, the parties could not agree on the issue of unpaid rent. Therefore, it was agreed that the issue of an Order of Possession would be dealt with by way of settlement agreement and I would decide the remaining issues.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the parties. I told the parties I would issue an Order of Possession. I confirmed with the parties that all issues had been covered. The parties confirmed they were agreeing to the settlement voluntarily and without pressure.

### Settlement Agreement

The Landlords and Tenant agree as follows:

1. The Notice is cancelled.
2. The tenancy will end and the Tenant will vacate the rental unit no later than 1:00 p.m. on October 31, 2019.
3. All rights and obligations of the parties will continue until the tenancy ends at 1:00 p.m. on October 31, 2019.

This agreement is fully binding on the parties and is in full and final satisfaction of the dispute regarding whether the Landlords are entitled to an Order of Possession based on the Notice.

The Landlords are issued an Order of Possession for the rental unit which is effective at 1:00 p.m. on October 31, 2019. If the Tenant fails to vacate the rental unit in accordance with the settlement agreement set out above, the Landlords must serve the Tenant with this Order. If the Tenant fails to vacate the rental unit in accordance with the Order, the Order may be enforced in the Supreme Court as an order of that Court.

I note that the Order of Possession applies to the Tenant and all occupants of the rental unit.

**Issues 2 & 3: Are the Landlords entitled to a Monetary Order for unpaid rent? Are the Landlords entitled to reimbursement for the filing fee?**

### Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlords, Tenant and Tenant's brother in relation to the rental unit. The tenancy started July 01, 2018 and is a month-to-month tenancy. Rent is \$2,400.00 due on the first day of each month. A \$1,200.00 security deposit was paid. The agreement is signed by the Landlord and Tenant.

The Landlord testified as follows. The Tenant owed \$850.00 in rent for August and \$2,400.00 for each of September and October. The Tenant paid \$1,500.00 of this.

Rent in the amount of \$4,150.00 is currently outstanding. The Tenant did not have authority under the *Act* to withhold rent.

The Tenant testified that he signed a different tenancy agreement than that in evidence with the Landlord. He testified that the tenancy started June 15<sup>th</sup>. The Tenant took the position that he pays rent for a period between the 15<sup>th</sup> of each month. The Tenant testified that he paid \$1,550.00 for August 15<sup>th</sup> to September 15<sup>th</sup> and \$1,500.00 for September 15<sup>th</sup> to October 15<sup>th</sup>. The Tenant confirmed he has only paid \$3,050.00 in rent since August.

Both parties agreed a third party is living in the basement of the rental unit. The Tenant said he allowed this person to live in the rental unit. The Tenant testified that the Landlords agreed the third party could pay them separately. He testified that rent for the whole house is \$2,400.00 but that in August him and the Landlords agreed he would pay his portion of the rent and the third party would pay his own portion to the Landlords. The Tenant took the position that he had paid his portion of the rent.

The Tenant did not claim that he had authority under the *Act* to withhold rent.

In reply, the Landlord denied that there was an agreement between the parties that the Tenant could pay a portion of the \$2,400.00 and the third party in the basement would pay his own portion to the Landlords.

### Analysis

Section 7(1) of the *Act* states:

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

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

I am satisfied the written tenancy agreement in evidence is accurate and represents the agreement between the parties as it was signed by both the Landlord and Tenant on June 25, 2018.

I do not accept that the parties signed a different agreement as claimed by the Tenant as there is no documentary evidence before me to support this.

Nor do I accept that the Landlords agreed in August that the Tenant could pay a portion of the \$2,400.00 rent and a third party could pay a portion of the rent as claimed by the Tenant. This is contrary to the written tenancy agreement which was signed by both parties and is in evidence. The Tenant submitted no evidence to support his testimony about such an agreement. In the absence of any evidence to support the Tenant's testimony, I do not accept that the Landlords agreed to change the terms of the written tenancy agreement as claimed.

Based on the written tenancy agreement, I find the Tenant is required to pay \$2,400.00 in rent by the first day of each month. Therefore, the Tenant was required to pay \$2,400.00 in rent by August 01, 2019, \$2,400.00 in rent by September 01, 2019 and \$2,400.00 in rent by October 01, 2019.

The Tenant acknowledged that he only paid \$3,050.00 in rent since August. Given this, and based on the testimony of the Landlord, I find the Tenant failed to pay \$4,150.00 of the rent owing for August to October.

The Landlord testified that the Tenant did not have authority under the *Act* to withhold rent. The Tenant did not claim he had authority under the *Act* to withhold rent. The Tenant claimed that the parties agreed to change the terms of the tenancy agreement which I have not accepted. In the circumstances, I find the Tenant did not have authority under the *Act* to withhold rent.

Given the above, I find the Tenant currently owes the Landlord \$4,150.00 in rent for August to October. The Landlord is entitled to recover this amount.

I note as well that, if the Tenant allowed a third party to move into the rental unit and contribute to the rent of \$2,400.00, this does not relieve the Tenant of his responsibility to pay \$2,400.00 in rent by the first day of each month pursuant to the tenancy agreement. This means that, if the third party fails to pay their portion of the rent to the Tenant, the Tenant is still responsible to pay the full amount of rent to the Landlords.

As the Landlords were successful in this application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

The Landlord is therefore entitled to monetary compensation in the amount of \$4,250.00. The Landlords can keep the \$1,200.00 security deposit towards this amount pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, I issue the Landlords a Monetary Order for the remaining amount of \$3,050.00.

### Conclusion

Pursuant to the settlement agreement, the Landlords are issued an Order of Possession for the rental unit which is effective at 1:00 p.m. on October 31, 2019. If the Tenant fails to vacate the rental unit in accordance with the settlement agreement set out above, the Landlords must serve the Tenant with this Order. If the Tenant fails to vacate the rental unit in accordance with the Order, the Order may be enforced in the Supreme Court as an order of that Court.

The Landlords are entitled to monetary compensation in the amount of \$4,250.00. The Landlords can keep the \$1,200.00 security deposit. I issue the Landlords a Monetary Order for the remaining amount of \$3,050.00. This Order must be served on the Tenant and, if the Tenant does 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: October 07, 2019

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Residential Tenancy Branch