



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant: OPU OPL MNRL MNDCL FFL  
For the landlords: CNR MNDCT RP RR FFT

### Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 3, 2019 (“10 Day Notice”), for a monetary claim of \$8,220.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order for regular repairs to the unit, site or property, for a rent reduction, and to recover the cost of the filing fee. The landlords applied for an order of possession based on the 10 Day Notice, based on a Two Month Notice to End Tenancy for Landlord’s Use of Property dated July 15, 2019 (“2 Month Notice”), for a monetary claim of \$7,382.77 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord MR (“landlord”) and the tenant attended the teleconference hearing. The hearing process was explained to the parties, documentary evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided.

Both parties confirmed receiving documentary evidence from the other party and that he had the opportunity to review that evidence prior to the hearing. Based on the above, I find that the parties were sufficiently served in accordance with the Act.

### Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the tenant

and the landlords indicated several matters of dispute on their respective applications, the most urgent of which is to dispute the 10 Day Notice for the tenant, and for the landlords for an order of possession and for a monetary order related to unpaid rent only. I find that not all the claims on the applications before me are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 10 Day Notice and for the recovery of their filing fee, and the landlords' request for an order of possession and their request for unpaid rent only at this proceeding. The balance of the applications for the tenant and the landlords are **dismissed, with leave to re-apply**.

During the hearing, the parties confirmed that since filing their respective applications, the tenant vacated the rental unit on October 2, 2019. As a result, the parties were advised that the landlords' application for an order of possession and the tenant's application to cancel the 10 Day Notice are now moot. Therefore, the parties were advised that I would only be considering the landlords' claim for unpaid rent at this proceeding.

In addition to the above and pursuant to section 64(3) of the *Act*, I have amended the landlord's name MR to reflect both names she is known by, which were confirmed during the hearing. As a result, landlord MR will also have an AKA ("Also Known As") name included on the decision and any applicable order.

#### Issues to be Decided

- Are the landlords entitled to a monetary order for unpaid rent, and if so, in what amount?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on July 1, 2015 and reverted to a month to month tenancy after six months. The monthly rent was originally \$1,000.00 per month and increased to \$1,100.00 during the tenancy. Rent was always due on the first day of each month. The parties agreed that a security deposit of \$500.00 was paid at the start of the tenancy, which the landlords continue to hold.

There is no dispute that the tenant was served with the 10 Day Notice and within 3 days of the date listed on the 10 Day Notice, the tenant applied to dispute the 10 Day Notice on September 6, 2019. According to the 10 Day Notice, \$1,110.00 in unpaid rent was owed as of September 1, 2019. The effective vacancy date listed on the 10 Day Notice was September 14, 2019, which has passed.

The tenant testified that they did not pay rent for September 2019 as they were afraid of the male landlord. The tenant provided no evidence, such as an order from an arbitrator that they had authority under the *Act* to not pay September 2019 rent. The tenant stated that in addition to their concerns regarding the male landlord, the tenant had many requests for repairs that the tenant claims were not addressed in a timely manner by the landlords.

Regarding the 2 Month Notice, it was dated July 15, 2019, and had an effective vacancy date of September 30, 2019. The tenant did not dispute the 2 Month Notice.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Landlords' claim for unpaid rent** – The landlords have claimed \$1,100.00 for unpaid rent for the month of September 2019. Section 26 of the *Act* applies and states:

#### **Rules about payment and non-payment of rent**

**26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.**

[Emphasis added]

Based on the above, I find the tenant breached section 26 of the *Act* as the tenant admitted to not paying rent for September 2019 and has provided insufficient evidence to support they had a

right under the *Act* to deduct all or a portion of rent. Therefore, I find the tenant owes the landlords **\$1,100.00** for unpaid September 2019 rent.

In addition, I find the tenancy ended based on 10 Day Notice and not the 2 Month Notice as the effective vacancy date of the 10 Day Notice was September 14, 2019 and the effective vacancy date listed on the 2 Month Notice was a later date, September 30, 2019. Therefore, I find the tenancy ended on September 14, 2019 based on the 10 Day Notice and I grant the landlords \$1,100.00 as claimed for this portion of their claim as I find the landlords have met the burden of proof.

As the landlords' application had merit, I grant the landlords **\$100.00** for the full recovery of the cost of their filing fee, pursuant to section 72 of the *Act*.

Given the above, I find the landlords have established a total monetary claim of **\$1,250.00**, comprised of \$1,100.00 in unpaid rent and the filing fee. I authorize the landlords to retain the tenant's full security deposit of \$500.00, which has accrued \$0.00 in interest, in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlords in the amount of **\$700.00**.

#### Conclusion

The landlords have established a total monetary claim of \$1,200.00 and have been authorized to retain the tenant's full \$500.00 security deposit as noted above. The landlords have been granted a monetary order in the amount of \$700.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 21, 2019

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Residential Tenancy Branch