



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, MNRL-S, OPR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on August 28, 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 August 08, 2019. The Landlord also sought to recover unpaid rent, to keep the security deposit and reimbursement for the filing fee.

The Representative attended the hearing for the Landlord with Y.Z. to assist given a language barrier. Nobody attended for the Tenant. I explained the hearing process to the Representative and Y.Z. who did not have questions when asked. The Representative and Y.Z. provided affirmed testimony.

I removed the second tenant named on the Application from the style of cause as this is a child.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Representative through Y.Z. testified that the hearing package and Landlord's evidence were served on the Tenant in person August 28, 2019. The Landlord submitted photos of this.

Based on the undisputed testimony of the Representative, and photos submitted, I find the Tenant was served with the hearing package and evidence in accordance with sections 59(3), 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the "Act"). The hearing package and evidence were served in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Representative was 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 Representative. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

The Representative through Y.Z. testified as follows. There is a verbal tenancy agreement between the Representative and Tenant. The Landlord is the owner of the rental unit. The tenancy started July 15, 2018 and is a month-to-month tenancy. Rent is \$1,500.00 per month due on the first day of each month. The Tenant paid a \$750.00 security deposit.

The Notice states that the Tenant failed to pay \$7,000.00 that was due August 01, 2019. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of August 19, 2019.

The Representative through Y.Z. testified that both pages of the Notice were served on the Tenant in person August 08, 2019 by D.G. The Landlord submitted the second page of a Proof of Service with the Tenant's signature acknowledging receipt of the Notice.

The Representative through Y.Z. testified that the Tenant has not paid rent since April. The Representative confirmed \$10,500.00 in rent is outstanding. The Representative sought to amend the Application to seek the full amount outstanding.

The Representative was not aware of the Tenant disputing the Notice.

In relation to the \$7,000.00 noted on the Notice, the Representative testified this was a mistake and should have said \$7,500.00.

The Representative did not think the Tenant had authority under the *Act* to withhold rent.

The Landlord submitted evidence that the Tenant made the following written agreements about unpaid rent:

- To “pay off the rents prior to May 28” on May 25, 2019
- To pay \$3,500.00 in rent May 25, 2019
- To pay \$5,000.00 in rent by June 29<sup>th</sup>
- To pay \$5,500.00 in rent by July 15<sup>th</sup>
- To pay four months’ rent in the amount of \$6,000.00 by August 20<sup>th</sup> or 25<sup>th</sup>

### Analysis

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 46 of the *Act* allows a landlord to end a tenancy where tenants have failed to pay rent. The relevant portions of section 46 state:

- 46** (1) 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.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

...

Based on the undisputed testimony of the Representative, I find the Tenant was obligated to pay \$1,500.00 in rent by the first day of each month pursuant to the verbal tenancy agreement. I find the Tenant was obligated to pay \$1,500.00 by the first of each month from April to October. Based in part on the undisputed testimony of the Representative, I find the Tenant did not have a right to withhold rent under the *Act* for this period. I have no evidence before me that the Tenant did. I find the Tenant was required to pay \$1,500.00 by the first of each month for April to October under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of the Representative, and in part on the evidence about the Tenant's written agreements about unpaid rent, I accept that the Tenant did not pay rent from April to October.

Given the Tenant failed to pay rent as required, the Landlord was entitled to serve him with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Representative, and Proof of Service, I find the Tenant was served with the Notice in accordance with section 88(a) of the *Act*. Given the Notice was served on the Tenant in person, I find he received it August 08, 2019.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*. I acknowledge that the Notice states \$7,000.00 is outstanding when \$7,500.00 was outstanding; however, I do not find this affects the validity of the Notice given the small difference and given the Tenant would have known how much rent was outstanding.

The Tenant had five days from receipt of the Notice on August 08, 2019 to pay or dispute it under section 46(4) of the *Act*. Based in part on the undisputed testimony of the Representative, I find the Tenant did not dispute the Notice. I have no evidence before me that he did.

I accept the undisputed testimony of the Representative that the Tenant did not pay any rent since April and therefore did not pay the outstanding rent by August 13, 2019 as required by section 46(4)(a) of the *Act*.

Given the Tenant did not dispute the Notice, or pay the outstanding rent, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended August 19, 2019, the effective date of the Notice. The Tenant was required under section 46(5)(b) of the *Act* to vacate the rental unit by August 19, 2019.

The Landlord is entitled to an Order of Possession. Pursuant to section 55(3) of the *Act*, I issue the Landlord an Order of Possession effective October 31, 2019.

I have accepted the undisputed testimony of the Representative that the Tenant did not pay any rent since April and therefore find the Tenant owes the Landlord \$10,500.00 in outstanding rent. I amend the Application to reflect this amount pursuant to section 4.2 of the Rules of Procedure. I find the Landlord is entitled to monetary compensation in the amount of \$10,500.00 for unpaid rent.

As the Landlord was successful, I award the Landlord \$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 \$10,600.00. Pursuant to section 72(2) of the *Act*, the Landlord is permitted to keep the \$750.00 security deposit. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order in the amount of \$9,850.00.

### Conclusion

The Landlord is entitled to an Order of Possession effective at 1:00 p.m. on October 31, 2019. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to a Monetary Order in the amount of \$9,850.00. 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 24, 2019

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Residential Tenancy Branch