



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, OPRM-DR (Landlord)  
                             CNC, CNR, MNDCT (Tenant)  
                             CNC, LRE, OLC, RP (Tenant)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed the first application August 30, 2019 (the “Tenant’s First Application”). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served August 26, 2019.

The Tenant filed an amendment September 12, 2019 disputing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served September 02, 2019 and adding a monetary claim for \$6,375.00.

The Tenant filed an amendment October 02, 2019 disputing a One Month Notice to End Tenancy for Cause served September 21, 2019.

The Tenant filed a second application August 30, 2019 (the “Tenant’s Second Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause served August 25, 2019;
- To suspend or set conditions on the Landlords’ right to enter the rental unit;
- For an order that the Landlords comply with the Act, regulation and/or the tenancy agreement; and
- For repairs to be made to the unit or property.

The Landlords filed the application September 11, 2019 (the “Landlords’ Application”). The Landlords applied for an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served September 02, 2019. The Landlords also sought to recover unpaid rent and reimbursement for the filing fee.

The Landlords appeared at the hearing. The Tenant appeared late. The Tenant appeared with the Advocate. The Tenant indicated at the outset that she was going to call her ex-boyfriend as a witness at the hearing. I did not hear from the Tenant’s witness as the Tenant could not explain how his testimony was relevant to the issue of unpaid rent. I explained the hearing process to the parties.

Pursuant to rule 2.3 of the Rules of Procedure (the “Rules”), I advised the Tenant I would consider the disputes of the notices to end tenancy and dismiss her remaining claims as they are not sufficiently related to the disputes of the notices to end tenancy.

I will consider the following claims:

From the Tenant’s First Application and Tenant’s Second Application:

- Dispute of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served August 26, 2019;
- Dispute of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served September 02, 2019;
- Dispute of the One Month Notice to End Tenancy for Cause served September 21, 2019; and
- Dispute of the One Month Notice to End Tenancy for Cause served August 25, 2019.

From the Landlords’ Application:

- Request for an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served September 02, 2019;
- Request to recover unpaid rent; and
- Request for reimbursement for the filing fee.

The remaining issues are dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Landlords confirmed receipt of the hearing packages for the Tenant's First Application and Tenant's Second Application. The Landlords testified that they did not receive the Tenant's evidence. The Landlords testified that they received an email from the Tenant indicating it was the evidence but they could not access the attachments.

I asked the Tenant if she served her evidence on the Landlords. The Tenant testified that she attempted to do so but the Landlords lived too far away, were not home when she tried to serve them and were not at work when she tried to serve them. The Tenant said the Landlords avoided service. The Tenant said she was unable to afford registered mail. The Tenant testified that she sent the evidence by email. The Tenant testified that she had evidence about her attempts at serving the Landlords.

I was not satisfied the Tenant served her evidence on the Landlords. I understood from the Tenant that she attempted to serve her evidence but was not successful at serving it. The Tenant did not point to evidence submitted showing she served her evidence on the Landlords. Email is not a permitted form of service under the *Act*.

I do not accept that the Landlords avoided service. Again, the Tenant did not point to evidence submitted that supports this. Nor do I accept the Tenant's reasons for failing to serve the Landlords. The evidence had to be served in accordance with section 88 of the *Act* which includes numerous methods of service.

I was not satisfied the Tenant complied with the Rules in relation to service of her evidence on the Landlords. I heard from the parties on whether the evidence should be admitted or excluded. During this, the Tenant testified that she, or someone for her, went to the Landlords' house to serve the evidence but the Landlords did not have a mailbox.

I exclude the Tenant's evidence. If the Tenant attended the Landlords' house, or had someone attend, as stated, the evidence could have been posted on the Landlords' door pursuant to section 88(g) of the *Act*. There is no reason the Tenant could not have done this. The absence of a mailbox is irrelevant. I am not satisfied the Tenant took the necessary steps to serve the Landlords. I find admitting the Tenant's evidence when it was not served on the Landlords as required would be prejudicial to the Landlords as they do not have the evidence and had no notice as to what evidence the Tenant was going to rely on at the hearing. The Tenant's evidence is excluded.

The Tenant testified that she only received a package for the Landlords' Application on October 15, 2019. She took issue with the timing of service.

The Landlords testified that the hearing package and evidence were sent September 19, 2019 by registered mail. The Landlords provided Tracking Number 1. I looked this up on the Canada Post website which shows a notice card was left September 20, 2019 and final notice card left October 02, 2019. It shows the package was signed for by the Tenant October 09, 2019.

The Landlords submitted the customer receipt with Tracking Number 1 on it as evidence.

The Landlords testified that a second evidence package was put in the Tenant's mailbox October 15, 2019. The Landlords testified that this was respondent evidence.

Based on the testimony of the Landlords, customer receipt and Canada Post website information, I find the Tenant was served with the hearing package and Landlords' first evidence package in accordance with sections 59(3), 88(c) and 89(1)(c) of the *Act*. The Tenant is not permitted to avoid or delay service by failing to pick the package up. The Tenant did not provide any reason for failing to pick the package up on September 20, 2019 when the first notice card was left and in fact testified that she only received the October 15<sup>th</sup> package. Her testimony on this point is contradicted by the Canada Post website information which I accept as accurate. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the package September 24, 2019, well before the hearing.

In relation to the October 15<sup>th</sup> package, the Landlords complied with the timing of service of respondent evidence as set out in rule 3.16 of the Rules and therefore I do not accept that there is an issue with the timing of service of this package.

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

I note the following in relation to the Tenant's behaviour throughout the hearing. The Tenant continuously interrupted me during the hearing while I was trying to ask

questions or provide information. The Tenant would not listen to my questions, the information provided or instructions.

The Tenant made rude and inappropriate remarks about the Landlords throughout the hearing. These remarks were not relevant to the issues before me. The Tenant continuously swore throughout the hearing despite being told numerous times that this was inappropriate and would lead to her being muted. At one point, I told the Tenant that if she continued to swear and make inappropriate comments about the Landlords, I would mute her and not hear from her further. The Tenant continued to swear and make inappropriate comments about the Landlords. I muted the Tenant and heard from the Landlords and Advocate. Despite my warning, I did hear from the Tenant further.

Throughout the hearing, the Tenant was given ample opportunity to provide relevant testimony. However, the Tenant would not focus on the relevant issues or provide clear testimony about issues when asked. Muting the Tenant throughout the hearing was necessary as the Tenant was continuously disruptive to the process.

#### Issues to be Decided

From the Tenant's First Application and Tenant's Second Application:

1. Should the following notices to end tenancy be cancelled?
  - a. 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served August 26, 2019;
  - b. 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served September 02, 2019;
  - c. One Month Notice to End Tenancy for Cause served September 21, 2019; and
  - d. One Month Notice to End Tenancy for Cause served August 25, 2019.

From the Landlords' Application:

1. Are the Landlords entitled to an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served September 02, 2019?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started August 15, 2019 and is a month-to-month tenancy. Rent is \$1,100.00 per month due on the first day of each month. The Tenant paid a security deposit of \$550.00.

***10 Day Notice to End Tenancy for Unpaid Rent or Utilities served August 26, 2019***

The Landlords acknowledged this notice is invalid and did not seek an Order of Possession based on it.

***10 Day Notice to End Tenancy for Unpaid Rent or Utilities served September 02, 2019 (the "Notice")***

The Notice was submitted as evidence. It states the Tenant failed to pay \$1,100.00 in rent due September 01, 2019. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Landlords. It has an effective date of September 11, 2019.

Landlord L.W. testified that both pages of the Notice were posted on the door of the rental unit September 02, 2019. The Landlords submitted a Proof of Service signed by a witness confirming this.

The Tenant testified that the first time she received the Notice was on October 15, 2019 with the package for the Landlords' Application. She said Landlord L.W. was lying and that the Landlords never served the Notice.

I pointed out to the Tenant that she filed an amendment dated September 12, 2019 stating that she had received a new 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 02, 2019 and seeking to dispute it. The Tenant testified that she did not recall this and said she was probably out of town working and maybe received it three days after it was posted.

The Landlords testified as follows. The Tenant did not pay September rent. In August, the Tenant paid the security deposit and \$550.00 for rent. The Tenant told them at one point that she was not moving into the rental unit and they refunded the security deposit and \$550.00. The Tenant did move in. The Landlords issued the Tenant a 10 Day Notice. The Tenant paid the \$550.00 for August rent. The Tenant paid \$100.00 in rent September 06, 2019. The Tenant paid October rent in October. The Tenant did not

have authority under the *Act* to withhold rent. They never agreed the Tenant could withhold rent.

The Tenant testified as follows. She was not able to take possession of the rental unit until September 05, 2019 due to a rat infestation. Landlord A.W. said he would pay for an exterminator and for painting. She had to pay for emergency housing for August. She could not afford to pay for two places in August. The Landlords did not refund the security deposit and August rent, the documentary evidence submitted showing this was done is fraudulent.

I understood the Tenant to say that Landlord A.W. said she could withhold rent or that he would pay her money back.

The Tenant took the position that she paid September rent in August. The Tenant testified that she made the following rent payments:

- August 01, 2019 - \$550.00
- August 15, 2019 - \$550.00
- August 24, 2019 - \$550.00
- September 02, 2019 - \$100.00
- October - \$1,100.00

The Tenant testified that she spent \$1,950.00 on emergency repairs.

The Advocate advised as follows. The Tenant had a verbal agreement with Landlord A.W. that the Tenant would arrange for repairs and Landlord A.W. would pay for the repairs. Based on this, the Tenant did arrange for repairs. Landlord A.W. did not pay for the repairs as promised.

Landlord A.W. denied that he had any agreement with the Tenant about repairs or painting. He testified that the Landlords never received a receipt from the Tenant for repairs or work done.

Landlord L.W. testified that the Tenant received the key for the rental unit August 17, 2019.

The Landlords submitted evidence showing the Tenant paid \$100.00 in rent September 06, 2019.

Analysis

***10 Day Notice to End Tenancy for Unpaid Rent or Utilities served August 26, 2019***

This notice is cancelled.

***10 Day Notice to End Tenancy for Unpaid Rent or Utilities served September 02, 2019 (the “Notice”)***

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*.

The only section of the *Act* that allows a tenant to withhold rent for repair or maintenance issues is section 33 of the *Act* in relation to emergency repairs. Section 33(1) of the *Act* sets out what specific repairs constitute emergency repairs. Section 33 of the *Act* states in part:

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:



- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
  - (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
  - (c) the amounts represent more than a reasonable cost for the repairs;
  - (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

[emphasis added]

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails 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...

Section 55(1) of the *Act* requires an arbitrator to issue an Order of Possession when a tenant has disputed a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

Based on the written tenancy agreement, I find the Tenant was obligated to pay \$1,100.00 in rent per month by the first of each month.

I do not accept that the Tenant had authority under the *Act* to withhold rent. There is insufficient evidence before me showing the Tenant complied with section 33 of the *Act* in relation to some repair that fell under the definition of an emergency repair in section 33(1) of the *Act*. I do not find the Tenant was entitled to withhold rent pursuant to section 33 of the *Act*.

I do not accept that the parties had an agreement about the Tenant deducting from rent or withholding rent. I would expect an agreement about this to be in writing given the importance of paying rent in a tenancy. The Tenant did not point to documentary evidence to support her position that the parties had an agreement about deducting from rent or withholding rent. Further, the Tenant's documentary evidence is not admissible in this hearing.

As well, I do not find that I can rely on the testimony of the Tenant in the absence of further evidence to support it. The Tenant testified that she only received one package from the Landlords about this hearing on October 15, 2019. The Landlords provided documentary evidence about the package sent September 19, 2019. The Canada Post website shows the Tenant signed for this package October 09, 2019. I find the Tenant's testimony that the only package she received was on October 15, 2019 to be either unreliable or not credible.

The Tenant testified that she did not receive the Notice until October 15, 2019. She went further and alleged that the Landlords were lying about serving the Notice. Yet the Tenant submitted a signed amendment September 12, 2019 disputing the Notice. I find the Tenant's testimony that she did not receive the Notice until October 15, 2019 unreliable or not credible.

These two instances of the Tenant providing testimony that is either unreliable or not credible calls into question the reliability and credibility of the Tenant's other testimony. I find I cannot rely on the Tenant's testimony unless it is supported by further evidence.

The Tenant's testimony that the parties had an agreement about her deducting rent or withholding rent is not support by further compelling evidence. I do not accept her testimony on this point.

I find the Tenant was required to pay \$1,100.00 in rent by September 01, 2019 pursuant to section 26(2) of the *Act* and that section 46(3) of the *Act* does not apply.

The Tenant took the position that she paid September rent in August. Even on the Tenant's own testimony about what payments were made when, the Tenant did not pay September rent by September 01, 2019. The Tenant testified that she made the following payments:

- August 01, 2019 - \$550.00
- August 15, 2019 - \$550.00
- August 24, 2019 - \$550.00
- September 02, 2019 - \$100.00
- October - \$1,100.00

Even accepting that the Landlords did not refund the \$550.00 security deposit and \$550.00 rent for August, the Tenant only paid \$650.00 for September rent according to her testimony.

Further, I do not accept the Tenant's outline of payments. As stated, I do not find the Tenant's testimony reliable or credible in the absence of evidence to support it. There is insufficient evidence before me to support the Tenant's outline of payments.

I accept the Landlords' testimony that the Tenant did not pay rent for September by September 01, 2019. The Landlords submitted evidence of the Tenant's payment for September showing she paid \$100.00 on September 06, 2019 with a note stating, "Rent

deducting part of emergency repair". As stated, I do not accept that the Tenant was entitled to withhold rent pursuant to section 33 of the *Act*. Based on the evidence, I accept the Landlords' testimony that the Tenant only paid \$100.00 of September rent on September 06, 2019.

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

Based on the testimony of Landlord L.W. and Proof of Service signed by a witness, I accept that the Notice was posted on the door of the rental unit September 02, 2019. I find the Tenant was served with the Notice in accordance with section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice September 05, 2019. The Tenant did not provide sufficient evidence to rebut the deeming provision.

I also find the Tenant received the Notice given she disputed it September 12, 2019.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on September 05, 2019 to pay or dispute it pursuant to section 46(4) of the *Act*. Based on the evidence already referred to, I accept that the Tenant only paid \$100.00 of September rent on September 06, 2019. This was not sufficient to cancel the Notice as the Tenant was required to pay the full amount outstanding to cancel the Notice. Further, the Tenant had until September 10, 2019 to dispute the Notice. The Tenant did not do so as she filed the amendment disputing the Notice September 12, 2019.

I find the Tenant did not pay the outstanding rent or dispute the Notice within the five-day time limit set out in section 46(4) of the *Act*. Therefore, pursuant to section 46(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended September 15, 2019, the corrected effective date of the Notice. The Tenant was required to vacate the rental unit by September 15, 2019.

I also note that, even if the Tenant had disputed the Notice on time, I have accepted that the Tenant did not pay rent as required and do not accept that the Tenant had authority under the *Act* to withhold rent. Therefore, I would have dismissed the Tenant's dispute.

The Landlords are entitled to an Order of Possession pursuant to section 55 of the *Act*. I issue the Landlords an Order of Possession effective two days after service on the Tenant.

I have accepted that the Tenant failed to pay \$1,000.00 of September rent. I have accepted that the Tenant had no authority under the *Act* to withhold rent. Therefore, the Landlords are entitled to recover \$1,000.00 in rent for September.

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

In total, the Landlords are entitled to \$1,100.00 and I issue the Landlords a monetary order in this amount.

I note that we did not address the One Month Notices at this hearing as we ran out of time to do so. I told the parties we would reconvene if necessary to address the One Month Notices. There is no need to reconvene as the One Month Notices are a moot point as this tenancy is ending pursuant to the Notice.

### Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served August 26, 2019 is cancelled.

The Tenant's dispute of the Notice is dismissed without leave to re-apply.

The Landlords are issued an Order of Possession effective two days after service on the Tenant pursuant to the Notice. 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 Landlords are entitled to monetary compensation in the amount of \$1,100.00. I issue the Landlords a Monetary Order in this amount. 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.

The Tenant's dispute of the One Month Notice to End Tenancy for Cause served September 21, 2019 and One Month Notice to End Tenancy for Cause served August 25, 2019 are a moot point as this tenancy is ending pursuant to the Notice.

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 30, 2019

---

Residential Tenancy Branch