



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNDCL, MNR, FFL

### Introduction

This hearing was scheduled for 9:30 a.m. on this date, via teleconference call, to deal with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent and utilities. Only the landlord appeared at the hearing. The tenant did not appear despite leaving the teleconference call open for approximately 30 minutes.

Since the tenant did not appear, I explored service of hearing documents upon the tenant. The landlord testified that the hearing package and evidence submitted at the time of filing was sent to the tenant via registered mail on September 18, 2019. The landlord provided a copy of the registered mail receipt, including tracking number. The registered mail was successfully delivered on September 19, 2019. Accordingly, I was satisfied the tenant was duly served with the landlord's Application for Dispute Resolution and supporting documents.

I noted that the landlord had uploaded evidence that appears consistent with the tenant having already vacated the rental unit. The landlord confirmed that he found the rental unit abandoned on October 6, 2019 and acknowledged he was unable to serve that evidence upon the tenant. The landlord stated the tenant would not provide the landlord with his forwarding address. I noted that the evidence appears to be related to a potential garbage removal claim, which is not an issue identified on the Application for Dispute Resolution and, as such, it is irrelevant to the matter before me and I did not consider it further.

The landlord requested that I amend the landlord's monetary claim to include unpaid rent for October 2019 and November 2019. The landlord pointed to a settlement agreement reached during a previous dispute resolution proceeding held on September 13, 2019 (file number referred to on the cover page of this decision). In the settlement agreement, the parties had agreed that the tenant would pay rent for October 2019 and

one-half of the monthly rent for November 2019 and vacate the rental unit by November 15, 2019. If the tenant failed to make these payments, the landlord was authorized to serve the tenant with an Order of Possession provided to the landlord by the Arbitrator. The Order of Possession had an effective date of seven (7) days after service.

Although the landlord had not served the tenant with an Amendment to an Application for Dispute Resolution to the tenant, I considered whether the landlord's request for amendment would have been reasonably foreseeable by the tenant and if it would be procedurally fair to amend the landlord's monetary claim during this hearing.

I made further enquiries of the landlord and determined that it may be unfair to amend the landlord's claim during the hearing and that further arguments from both parties may be appropriate in the circumstances described to me by the landlord, which I summarize as follows.

The landlord testified that he posted the seven day Order of Possession he was provided with the previous dispute resolution decision on the door of the rental unit on October 2, 2019. On October 2, 2019 and October 4, 2019, the landlord observed the tenant's furniture being in the rental unit by looking in the window of the door. The landlord returned to the property on October 6, 2019 and observed that most of the furniture had been removed with the exception of furniture the landlord considered to be garbage. The rental unit was locked but the landlord cut the lock and entered the unit. The landlord determined the unit was abandoned so he changed the locks and began the process of cleaning and removing the abandoned possessions and garbage. The landlord testified that the garbage was removed on October 8, 2019 and since that date he has been renovating the rental unit. The landlord stated that he intends to return the rental unit to the rental market after he finishes renovating it.

As I informed the landlord, an applicant must prove more than a breach of an agreement to succeed in a monetary claim. An applicant making a monetary claim must meet the criteria of a four-part test, as provided in Residential Tenancy Branch Policy Guideline 16: *Compensation for Damage or Loss*. In light of what I heard above, I declined to permit the Amendment and the landlord remains at liberty to make another Application for Dispute Resolution to make additional claims against the tenant and a decision made upon hearing from both parties.

Since the landlord has already been provided an Order of Possession under the previous dispute resolution proceeding, and the landlord has already taken possession

of the rental unit, an Order of Possession is no longer required and I do not provide one with this decision.

Issue(s) to be Decided

Has the landlord established an entitlement to compensation for unpaid rent and utilities, as claimed?

Background and Evidence

The tenancy started on January 15, 2018 on a month to month basis. The tenant paid a security deposit of \$800.00. The rent was set at \$1,600.00 payable on the first day of every month.

The landlord submitted that the tenant failed to pay \$100.00 of the rent payable for July 2019 and the tenant did not pay any rent for August 2019 or September 2019 for a total of \$3,300.00 in unpaid rent.

The landlord also submitted that on December 22, 2017 he had the oil tank at the rental property filled at a cost of \$675.71. When the tenancy started the parties agreed that the tenant would pay \$600.00 to the landlord for the oil still in the tank when the tenancy started. The landlord submitted that the tenant did pay \$300.00 toward this but failed to pay the remainder of \$300.00. The landlord issued a demand letter for the payment of \$300.00 on June 12, 2019.

On September 1, 2019 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the rental unit door. The 10 Day Notice indicates \$3,300.00 in rent was outstanding as of September 1, 2019 and utilities of \$300.00 were demanded on June 12, 2019 remained outstanding.

By way of this Application for Dispute Resolution the landlord seeks to recover a total of \$3,600.00 in unpaid rent and utilities.

Documentary evidence provided with the Application for Dispute Resolution included a copy of the tenancy agreement; the receipt for the oil tank fill on December 22, 2017; the demand letter for utilities dated June 12, 2019; the 10 Day Notice; and, a signed Proof of Service for the 10 Day Notice.

I noted that the landlord had not requested authorization to retain the tenant's security deposit in filing this Application for Dispute Resolution. The landlord confirmed that he will continue to hold it in trust, to be administered in accordance with the Act at a later date.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I was not provided any evidence to suggest the tenant had the legal right to withhold or make deductions from rent payable.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1,600.00 on the first day of every month and the tenant has failed to pay the required amount for July 2019, August 2019 and September 2019, as claimed. Therefore, I grant the landlord's request to recover unpaid rent of \$3,300.00 from the tenant.

Upon review of the tenancy agreement, I accept that the rent did not include utilities f heat or heating oil. I accept the unopposed evidence before me that the landlord had provided the tenant with a nearly full tank of heating oil when the tenancy started and the tenant agreed to pay the landlord \$600.00 for the oil. I also accept the unopposed evidence that the tenant did pay \$300.00 toward this agreement but failed to pay the balance of \$300.00. Therefore, I grant the landlord's request to recover \$300.00 that was still owed for the heating oil.

I further award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent that was due on July 1, 2019	\$ 100.00
Unpaid rent that was due on August 1, 2019	1,600.00
Unpaid rent that was due on September 1, 2019	1,600.00
Unpaid utilities (heating oil)	300.00
Filing fee	<u>100.00</u>
Monetary Order	\$3,700.00

The security deposit remains in trust at this time, to be administered in accordance with section 38 of the Act.

### Conclusion

The landlord is provided a Monetary Order for the sum of \$3,700.00 to serve and enforce upon the tenant.

The security deposit remains in trust at this time, to be administered in accordance with section 38 the Act.

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: November 19, 2019

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Residential Tenancy Branch