



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL OPRM-DR**

### Introduction

On December 4, 2019, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

*I find I am not able to determine whether the tenants had the information necessary to dispute the 10 Day Notice. For this reason, I find that a participatory hearing is necessary to protect the procedural rights of the tenants.*

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- Authorization to recover the filing fees from the tenant pursuant to section 72; and
- An order of possession and a monetary order for unpaid rent, by direct request pursuant to sections 46 and 55

The landlord attended the hearing and the tenant DM ("tenant") attended the hearing. The tenant JM did not attend the hearing although I left the teleconference hearing connection open until 11:15 a.m. to enable the tenant JM to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, the tenant, DM and I were the only ones who had called into this teleconference.

The tenant DM acknowledged receipt of the landlord's Application for Dispute Resolution Proceedings Package, however disputed receiving the landlord's evidence.

The landlord testified she served both the tenants with the evidence together with the Application for Dispute Resolution Proceedings Packages by registered mail and by leaving the package in the tenant's mailbox on December 9, 2019. The tracking numbers for the registered mailings are listed on the cover page of this decision. I deem the Application for Dispute Resolution Proceedings Package and evidence served upon the tenants on December 14, 2019, 5 days after mailing pursuant to sections 89 and 90 of the Act.

### Background and Evidence

The landlord testified that monthly rent for the rental unit is \$2,350.00. The tenants have not paid rent for the months of December or January, however they made a single payment of \$450.00, leaving arrears of \$4,250.00. The tenant DM does not dispute that she or the co-tenant failed to pay rent for December and January. The tenant DM testified that the co-tenant JM vacated the rental unit some time ago, leaving DM alone with the arrears to pay. The landlord was not provided with a forwarding address for the co-tenant, JM.

### Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. There will be a mutual agreement to end the tenancy. The tenancy will end on February 1, 2020 at 5:00 p.m. by which time the tenants and any other occupants will have vacated the rental unit.
2. There will be a monetary order against tenants for the sum of \$4,250.00.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

The award of the filing fee is discretionary upon the director's delegate pursuant to section 72 of the Act and I decline to award it.

The matter of the tenants' security deposit was not explored during the hearing. If the landlord is holding the tenant's security deposit, the landlord is at liberty to retain the tenants' security deposit in partial satisfaction of the monetary order pursuant to section 72 of the Act.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession. The parties agree that the tenants are to vacate the rental unit by 5:00 P.M. on February 1, 2020, and the landlord is to serve this Order of Possession immediately and enforce it as early as 5:01 PM on February 1, 2020, should the landlord choose to do so.

In order to implement the above settlement reached between the parties and as discussed with them at the hearing, I issue a monetary Order in the landlord's favour in the amount of \$4,250.00.

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: January 28, 2020

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Residential Tenancy Branch