



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNRL-S MNDCL-S FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 5, 2019 (10 Day Notice), for a monetary order in the amount of \$5,500.00 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenant's security deposit and/or pet damage deposit, and to recover the cost of the filing fee.

Two agents for the landlord SA and PS (agents) attended the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 19, 2019 (Notice of Hearing), application and documentary evidence were considered. The agents testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on December 19, 2019. A registered mail tracking number referenced on the cover page of this decision was submitted in evidence. A copy of the registered mail receipt was also submitted in evidence. According to the online registered mail tracking website the tenant signed for and accepted the registered mail package on December 29, 2019. As a result of the above, I find the tenant was duly served on December 29, 2019.

Given that the tenant did not attend the hearing, I consider this matter to be undisputed by the tenant and the hearing continued without the tenant present in accordance with Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Words

utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

Firstly, the agent confirmed that since the application was filed, the tenant has vacated the rental unit, and as a result, an order of possession is no longer requested. As a result, I will not consider the application for the order of possession.

Secondly, the agent confirmed their email address and was advised that the decision and any resulting order would be sent by email to the landlord. The decision will be sent by regular mail to the tenant as an email address for the tenant was not known to the agent. An updated mailing address was provided for the tenant during the hearing.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

The agents confirmed that there was no written tenancy agreement, which I will deal with later in this decision. The agents stated that the tenant did not pay a security deposit or pet damage deposit. As a result, I will not offset any claim by either deposit as neither were paid. The agents stated that they were unsure of the start date of the tenancy. The agents affirmed that the monthly rent was \$1,800.00 per month and due on the first day of each month.

Regarding the end of tenancy, the agents testified that the tenant failed to remove a vehicle, which was eventually moved into storage by the landlord on January 31, 2020, which must be stored in accordance with the Residential Tenancy Regulation (Regulation).

The landlord's monetary claim of \$5,500.00 is comprised as follows:

- \$1,800.00 unpaid for December 2019
- \$1,800.00 unpaid for January 2020
- \$1,800.00 for loss of rent for February 2020.

- \$100.00 for filing fee.

The 10 Day Notice was submitted in evidence and is dated December 5, 2019. The agents stated that the tenant was served with the 10 Day Notice by posting to the tenant's door on December 5, 2019. The effective vacancy date listed on the 10 Day Notice is December 5, 2019. The agents stated that the tenant did not pay any rent for December 2019, January 2020, and that the landlord suffered a loss of rent for February 2020 due to the vehicle left behind by the tenant, which is being stored by the landlord as per the Regulation. The agents stated that the tenant did not dispute the 10 Day Notice.

### Analysis

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

Section 13(1) of the Act applies and states:

#### **Requirements for tenancy agreements**

**13(1)**A landlord **must** prepare **in writing** every tenancy agreement entered into on or after January 1, 2004.

[Emphasis added]

Based on the above, and considering that the landlord failed to have a written tenancy agreement, **I caution** the landlord to comply with section 13(1) of the Act in the future.

Section 90 of the Act states that documents posted to the door are deemed served 3 days after they are posted. Therefore, I find the tenant was duly served with the 10 Day Notice on December 8, 2019. I also accept that the 10 Day Notice was not disputed by the tenant. Section 53 of the Act automatically corrects the effective date of the 10 Day Notice, which I find would automatically correct to December 18, 2019.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. 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]

Section 46(5) of the Act applies and states:

**Landlord's notice: non-payment of rent**

46(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.**

[Emphasis added]

Based on the above, I find the tenant breached sections 26 and 46(5) of the Act by failing to pay rent as claimed on the date that it was due and failed to vacate the rental unit by December 18, 2019, which was the corrected effective vacancy date listed on the 10 Day Notice, and which was not disputed by the tenant. As a result, I find the landlord's application is fully successful in the amount of \$5,500.00; comprised as claimed above, and also includes the \$100.00 filing fee pursuant to section 67 and 72 of the Act. I grant the landlord a monetary order pursuant to section 67 of the Act, for the amount owing by the tenant to the landlord in the amount of **\$5,500.00** as claimed.

**I caution** the tenant not to breach sections 26 and 46(5) of the Act in the future.

Conclusion

The landlord's application is fully successful.

I find the tenancy ended December 18, 2019, which was the corrected effective vacancy date.

The landlord has established a total monetary claim of \$5,500.00 as described above. The landlord has been granted a monetary order pursuant to section 67 of the Act, for the amount owing by the tenant to the landlord in the amount of \$5,500.00. The landlord

must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The landlord and tenant have been cautioned as noted above.

This decision will be sent by email to the landlord and by regular mail to the tenant. The monetary order will be sent by email to the landlord only for service on the tenant.

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: February 21, 2020

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Residential Tenancy Branch