



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Shady Nook Trailer Park and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, OPC, MNRL, OL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 13, 2020 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a One Month Notice to End Tenancy for Cause dated June 26, 2020 (the “Notice”);
- To recover unpaid rent;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Agent for the Landlord appeared at the hearing. The Tenants appeared at the hearing. The Agent confirmed this is a *Residential Tenancy Act* (the “Act”) matter.

The Tenant said at the outset that the Tenants have vacated the rental unit and are moving their belongings out.

I explained the hearing process to the parties who did not have questions when asked. The Agent and Tenant provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not. I addressed service of the hearing package and Landlord’s evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to 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?

### **Issue 1: Is the Landlord entitled to an Order of Possession based on the Notice?**

#### Settlement

Given the Tenant's comments about vacating the rental unit, I raised the possibility of settlement pursuant to section 63(1) of the *Act* which allows an arbitrator to assist the parties to settle the dispute.

I explained the following to the parties. Settlement discussions are voluntary. If they chose not to discuss settlement that was fine, I would hear the matter and make a final and binding decision in the matter. If they chose to discuss settlement and did not come to an agreement that was fine, I would hear the matter and make a final and binding decision in the matter. If they did come to an agreement, I would write out the agreement in my written decision and make any necessary orders. The written decision would become a final and legally binding agreement and neither party could change their mind about it later.

The Agent and Tenant agreed about ending the tenancy but did not agree about the remaining issues. The Agent and Tenant agreed the issue of whether the Landlord is entitled to an Order of Possession based on the Notice would be dealt with through a settlement agreement and I would decide the remaining issues.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the Agent and Tenant. I confirmed with the Agent and Tenant that all issues had been covered. The Agent and Tenant confirmed they were agreeing to the settlement voluntarily and without pressure. The Tenant confirmed understanding that Tenant S.B. would be bound by the settlement agreement.

### Settlement Agreement

The Landlord and Tenants agree as follows:

1. The Notice is cancelled.
2. The tenancy will end and the Tenants will vacate the rental unit no later than 1:00 p.m. on August 31, 2020.
3. All rights and obligations of the parties under the tenancy agreement will continue until the tenancy ends at 1:00 p.m. on August 31, 2020.

This agreement is fully binding on the parties and is in full and final satisfaction of the dispute regarding whether the Landlord is entitled to an Order of Possession based on the Notice.

The Landlord is issued an Order of Possession for the rental unit which is effective at 1:00 p.m. on August 31, 2020. If the Tenants fail to vacate the rental unit in accordance with the settlement agreement set out above, the Landlord must serve the Tenants with this Order. If the Tenants fail to vacate the rental unit in accordance with the Order, the Order may be enforced in the Supreme Court as an order of that Court.

**Issue 2: Is the Landlord entitled to recover unpaid rent?**

**Issue 3: Is the Landlord entitled to keep the security deposit?**

**Issue 4: Is the Landlord entitled to reimbursement for the filing fee?**

### Background and Evidence

The parties agreed on the following. There is a written tenancy agreement in this matter. The tenancy started in July of 2019 and is a month-to-month tenancy. Rent is \$825.00 per month due on the first day of each month. The Tenants paid a \$412.50 security deposit and no pet damage deposit.

The Agent testified that the Tenants did not pay June, July or August rent. The Tenant agreed with this. The Tenant did not take the position that the Tenants had authority under the *Act* to withhold rent. I understood the issue between the parties to be the method by which rent was to be paid for these months.

The Tenant took the position that the Tenants should not have to pay the filing fee.

Analysis

Section 7(1) of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

Section 26(1) of the *Act* states:

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.

I am satisfied the Tenants are required to pay \$825.00 in rent per month by the first day of each month as the Agent and Tenant agreed on this.

I am satisfied the Tenants did not pay rent for June, July or August as the Agent and Tenant agreed on this.

I am not satisfied the Tenants had authority under the *Act* to withhold rent as the Tenant did not point to any authority under the *Act* to withhold rent or take the position that the Tenants did have authority under the *Act* to withhold rent.

I understood the issue between the parties to be the method of payment for June, July and August. The Agent and Tenant disagreed about what occurred. I do not find this issue relevant. The Landlord not accepting a specific method of payment does not relieve the Tenants of their obligation to pay rent.

I am satisfied the Tenants owe the Landlord rent for June, July and August in the amount of \$2,475.00. I award the Landlord rent for all of August given rent is due on the first day of each month and given the settlement agreement outlined above.

As the Landlord was successful in the Application, I award them \$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 \$2,575.00. The Landlord can keep the \$412.50 security deposit towards this amount

pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order for the remaining amount of \$2,162.50.

### Conclusion

Pursuant to the settlement agreement, the Landlord is issued an Order of Possession for the rental unit which is effective at 1:00 p.m. on August 31, 2020. If the Tenants fail to vacate the rental unit in accordance with the settlement agreement set out above, the Landlord must serve the Tenants with this Order. If the Tenants fail to vacate the rental unit in accordance with the Order, the Order may be enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to monetary compensation in the amount of \$2,575.00. The Landlord can keep the \$412.50 security deposit. I issue the Landlord a Monetary Order for the remaining amount of \$2,162.50. This Order must be served on the Tenants and, if the Tenants do 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: August 24, 2020

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Residential Tenancy Branch