



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CHEOL AND HEE HOLDING GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, OPR, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 15, 2020 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 08, 2020 (the “Notice”);
- To recover unpaid rent;
- To keep the security and pet damage deposits; and
- For reimbursement for the filing fee.

The Agent for the Landlord attended the hearing. Nobody attended the hearing for the Tenants. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Agent confirmed this matter falls under the *Residential Tenancy Act* (the “Act”).

The Landlord submitted evidence prior to the hearing. The Tenants did not. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that hearing packages and evidence were sent to each Tenant by registered mail at the rental unit. The Landlord had submitted customer receipts for these with Tracking Numbers 1 and 2 on them. The Landlord also submitted the Canada Post website information showing the packages were sent July 17, 2020, notice cards were left July 20, 2020 and the packages were not picked up.

Based on the undisputed testimony of the Agent, customer receipts and Canada Post website information, I find the Tenants were served with the hearing package and

evidence in accordance with sections 88(c) and 89(1)(c) of the *Act*. The Tenants cannot avoid service by failing to pick up the packages. The Tenants are deemed to have received the packages July 22, 2020 pursuant to section 90(a) of the *Act*. I also find the Landlord complied with rule 3.1 of the Rules of Procedure (the “Rules”) in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Agent. I will only refer to the 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 and/or pet damage deposits?
4. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started May 01, 2019 and was for a fixed term ending April 30, 2020. The tenancy then became a month-to-month tenancy. Rent is \$700.00 per month due on or before the first day of each month. The Tenants paid a \$350.00 security deposit and \$350.00 pet damage deposit. The agreement is signed for the Landlord and by the Tenants.

The Notice states that the Tenants failed to pay \$700.00 in rent which was due March 01, 2020. The Notice is addressed to the Tenants and refers to the rental unit. It is signed and dated by the Agent. It has an effective date of July 18, 2020.

The Agent testified that all pages of the Notice were served on a friend of the Tenants at the rental unit July 08, 2020. The Agent testified that the friend seems to live at the rental unit.

The Agent testified that the Tenants did not pay March rent which is reflected on the Notice. The Agent testified that the Tenants have not paid any rent since and did not dispute the Notice.

The Agent confirmed the Landlord is seeking to recover unpaid rent for March, April, May, June, July and August.

The Agent testified that the Tenants did not have authority under the *Act* to withhold rent.

The Agent also said the Landlord is seeking late fees.

### Analysis

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*.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants have failed 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...

Based on the undisputed testimony of the Agent and written tenancy agreement, I am satisfied the Tenants are required to pay \$700.00 in rent per month by the first day of each month.

Based on the undisputed testimony of the Agent, I am satisfied the Tenants did not have authority under the *Act* to withhold rent for March to August. There is no evidence before me that the Tenants did.

I am satisfied the Tenants were required to pay \$700.00 in rent by March 01, 2020 pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of the Agent, I am satisfied the Tenants failed to pay March rent. Given the Tenants failed to pay rent as required, the Landlord was entitled to serve them with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Agent, I am satisfied the Notice was served on the Tenants in accordance with section 88(e) of the *Act* on July 08, 2020.

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

The Tenants had five days from July 08, 2020 to pay or dispute the Notice pursuant to section 46(4) of the *Act*.

I am satisfied based on the undisputed testimony of the Agent that the Tenants have not paid any rent from March to August. There is no evidence before me that the Tenants did.

I am satisfied based on the undisputed testimony of the Agent that the Tenants did not dispute the Notice. There is no evidence before me that the Tenants did.

Given the Tenants did not pay the outstanding rent or dispute the Notice by July 13, 2020, I find pursuant to section 46(5)(a) of the *Act* that the Tenants are conclusively presumed to have accepted that the tenancy ended July 18, 2020, the effective date of

the Notice. The Tenants were required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by July 18, 2020.

The Landlord is entitled to an Order of Possession. Pursuant to section 55 of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenants.

As stated, I am satisfied the Tenants have not paid any rent from March to August. As stated, I am satisfied the Tenants did not have authority under the *Act* to withhold rent for March to August. Therefore, the Tenants owe the Landlord \$4,200.00 in unpaid rent.

I allow the Landlord to amend the Application to include the full amount of rent outstanding pursuant to rule 4.2 of the Rules.

I do not allow the Landlord to seek late fees as this is not a foreseeable increase to an amount sought, it is a new amount sought for something not included in the Application.

As the Landlord was successful in the Application, I award the Landlord \$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 \$4,300.00. The Landlord can keep the security and pet damage deposits towards this pursuant to section 72(2) of the *Act*. I issue the Landlord a Monetary Order for the remaining \$3,600.00 pursuant to section 67 of the *Act*.

### Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to monetary compensation in the amount of \$4,300.00. The Landlord can keep the security and pet damage deposits towards this. I issue the Landlord a Monetary Order for the remaining \$3,600.00. 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 25, 2020

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Residential Tenancy Branch