



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the landlord served the tenant with the landlord's application for dispute resolution via registered mail, though neither could recall the date. I find that the tenant was served in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in September of 2019 and is currently ongoing. Monthly rent in the amount of \$1,850 is payable on the first day of each month. A security deposit of \$925.00 and a pet damage deposit of \$925.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the landlord posted a notice to end tenancy (the "notice") on the tenant's door on or around July 6, 2020. The notice was not on a Residential Tenancy Branch form. The notice was entered into evidence and states that the tenant must move out by July 6, 2020.

Both parties agreed that the tenant owes outstanding rent from March to August 2020. The tenant testified that he has paid the landlord what he could when he could. Neither party provided a breakdown regarding what rent from each month remains outstanding and what amount has been paid.

Both parties agreed that they have not entered into a re-payment agreement and that the landlord has not served the tenant with a re-payment plan for outstanding rent.

### Analysis

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1)for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and  
(e)when given by a landlord, be in the approved form.

I find that the notice was not in the approved form. I therefore find that the notice is of no force or effect.

Policy Guideline #52 states:

Unless a landlord has given a tenant a valid repayment plan for unpaid affected rent, or there is a valid prior agreement relating to the affected rent, the landlord cannot legally end the tenancy on the basis of that unpaid rent...

The COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation defines “affected rent” as:

- (a) rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the specified period, and
- (b) utility charges that become due to be paid by a tenant during the specified period, if a tenancy agreement requires the tenant to pay utility charges to the landlord.

The COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation defines “specified period” as:

the period that starts March 18, 2020 and ends on the earlier of the following:

- (a) August 17, 2020;
- (b) the date on which the last extension of the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the Emergency Program Act expires or is cancelled.

I also find that the landlord is not entitled to an Order of Possession because the landlord has not served the tenant with a valid re-payment plan.

Residential Tenancy Policy Guideline #52 states:

The C19 Tenancy Regulation sets out that repayment plans must have the following terms:

1. The repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021;
2. The payment of the unpaid affected rent must be in equal installments;
3. Each installment must be paid on the same date that rent is due under the tenancy agreement; and
4. The date of the first installment must be at least 30 days after the date the repayment plan is given by the landlord to the tenant.

For example, if the landlord gave the tenant a repayment plan on August 22, 2020, the repayment period starts on that day. If the tenancy agreement stipulates that rent is due on the first of each month, the first installment payment would be due on October 1, 2020. Each installment would be due on the first of each month thereafter, and the last installment would be due on July 1, 2021. This means the tenant would pay the unpaid affected rent over 10 installments. If there was \$2,000 of unpaid affected rent, each equal installment would be \$200.

If the amount of unpaid affected rent is not evenly divisible by the number of installment periods, the amount should be rounded to the nearest cent. The C19 Tenancy Regulation requires that the repayment plan be in writing and include:

- The date the repayment period starts;
- The total amount of affected rent that is unpaid;
- The date on which each installment must be paid; and
- The amount that must be paid in each installment.

If a repayment plan does not comply with the terms and requirements set out above, it has no effect. If a repayment plan has no effect, it cannot form the basis for a 10 Day Notice to End Tenancy for Unpaid Rent and it cannot cancel a prior agreement. A repayment plan will only take effect when the landlord or tenant, who is giving the repayment plan, gives it to the other person and it complies with the requirements and terms.

A repayment plan must be given to a landlord or tenant in one of the following ways:

- by leaving a copy with the person;
- if the person is a landlord, by leaving a copy with an agent of the landlord;
- by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

- if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- as ordered by an arbitrator on application....

#### APPLICATIONS FOR MONETARY ORDERS FOR UNPAID AFFECTED RENT MADE BEFORE JULY 31, 2020....

Where a landlord is required to give a repayment plan but no valid repayment plan has been given and no valid prior agreement exists, the arbitrator may ... dismiss the application with leave to reapply.

I find that the landlord is required to give the tenant a re-payment plan in accordance with the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation. As this has not yet occurred, I dismiss the landlord's application for a monetary award for unpaid rent, with leave to reapply.

As this tenancy is continuing, I find that the landlord's application to retain the security deposit is premature and is therefore dismissed with leave to reapply.

As the landlord was not successful in this application for dispute resolution, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

#### Conclusion

The landlord's application for and Order of Possession and recovery of the filing fee are dismissed without leave to reapply.

The landlord's application for a Monetary Order for unpaid rent and authorization to retain the tenant's security and pet damage deposits are dismissed with leave to reapply.

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: August 19, 2020

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Residential Tenancy Branch