



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNDL, MNRL, MNDCL, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on August 4, 2020, in which the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy, compensation for damage to the rental unit and recovery of the filing fee.

Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 9:51 a.m. Additionally, 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 and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he served the Tenant with the Notice of Hearing and the Application on August 12, 2020 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where

the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant/Landlord was duly served as of August 17, 2020 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Matter

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. At all times an Arbitrator is guided by *Rule 1.1* which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

*Residential Tenancy Branch Rule of Procedure 2.3* provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are also scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find this claim is related to the Landlord's claim for unpaid rent.

Conversely, I find that the Landlord's monetary claim for damage to the rental unit is not sufficiently related to the Notice. Further the *Act* requires a Tenant to leave the rental unit clean and undamaged; as the tenancy has yet to end, the Tenant still has the opportunity to repair damage to the rental unit. Accordingly, I exercise my discretion and dismiss with leave to reapply the Landlord's request for compensation for damage.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation for unpaid rent?
3. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord stated that the tenancy began approximately three years ago. Monthly rent is \$600.00 payable on the last day of the month.

The Landlord stated that the Tenant has not paid rent since October 2019 such that at the time of the hearing the Tenant owes \$6,600.00.

The Landlord issued the Notice on July 21, 2020 indicating that the sum of \$3,000.00 was owing as of March 1, 2020. The Landlord testified that the Notice was posted to the rental unit door on July 21, 2020. The effective date of the Notice was August 1, 2020.

The Landlord confirmed that the Tenant did not apply to dispute the Notice, nor did the Tenant make any contact with the Landlord with respect to the Notice.

### Analysis

Based on the Landlord's undisputed testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

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

**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 [*form and content of notice to end tenancy*].

(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.

(6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

A tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

### **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.

There are only four occasions when a Tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenant had no such legal authority to withhold rent.

I therefore find that the Tenant failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*.

I accept the Landlord's testimony that he served the Notice on the Tenant on July 21, 2020 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later; accordingly, I find the Tenant was served the Notice as of July 24, 2020.

I find that the Tenant did not pay the outstanding rent and did not apply to dispute the Notice within the five days required by section 46(4) and is therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I also find that the Landlord has established a total monetary claim of \$6,700.00 comprised of unpaid rent for the months November 2019, December 2019, and January through September 2020 and the \$100.00 fee paid by the Landlord for this application.

I grant the Landlord an Order under section 67 for the balance due in the amount of **\$6,700.00**. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and is granted a Monetary Order for the balance due.

The Landlord's request for monetary compensation for damage to the rental unit is dismissed with leave to reapply.

This Decision is final and binding on the parties, except as 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: September 11, 2020

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Residential Tenancy Branch