



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, OPU, FFL, CNC, LRE, OLC

### Introduction

This hearing was set to deal with joined applications. The landlords applied for an Order of Possession based on a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities served on July 7, 2020 ("10 Day Notice") and a Monetary Order for unpaid rent and utilities. The tenant had applied to cancel a One Month Notice to End Tenancy for Cause served on August 17, 2020 ("1 Month Notice"); for repair orders; and, to suspend or set conditions on the landlord's right to enter the rental unit.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of hearing documents upon each other.

The tenant testified that he had not served his proceeding package or his evidence upon the landlords. The landlords confirmed they had not received the tenant's proceeding package or evidence. I dismissed the tenant's Application for Dispute Resolution as it was not served. I do not give leave to reapply as I have found the tenancy has ended and the landlords are being provided an Order of Possession effective September 30, 2020 due to the 10 Day Notice, for reasons provided in this decision.

I did not admit the tenant's documentary evidence as it was not served upon the landlords; however, I gave him the opportunity to describe his evidence orally. The tenant's evidence, as described, constituted proof of payment of rent for 15 months from July 2019 through to September 2020 which was not overly relevant to the matter at hand which was unpaid rent for months in 2018.

As for the landlord's proceeding package, the landlord testified that he served it upon the tenant in person on August 17, 2020. The tenant acknowledged that was accurate.

As for the landlord's evidence, the landlord testified that he served some evidence to the tenant with the proceeding package but he could not recall which documents with certainty. I turned to the tenant to determine what documents accompanied the landlord's proceeding package. The tenant described the following documents as accompanying the landlord's proceeding package: the tenancy agreement; a Shelter Information form; the 10 Day Notice; the 1 Month Notice; and, a hand-written document outlining the rental payments in 2018 that was prepared by the landlord. I had those same documents before me and I admitted them into evidence for consideration in making this decision. The other documents submitted by the landlords were not admitted for consideration as I was not satisfied they were served upon the tenant.

#### Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent and/or utilities?
2. Have the landlords established an entitlement to a Monetary Order for unpaid rent and utilities, and if so, how much?

#### Background and Evidence

The parties executed a written tenancy agreement that reflects a tenancy set to commence April 1, 2015. The tenant testified he did not move in until April 15, 2015. The monthly rent was set at \$450.00 payable on the first day of every month. No security deposit was paid or collected. The tenancy agreement indicates that utilities were not included in the monthly rent. The Shelter Information document provided to income assistance for the tenant indicates utilities are not included in rent.

On July 7, 2020 the landlord served the tenant with the 10 Day Notice in person. The 10 Day Notice indicates rent of \$4950.00 was outstanding and utilities of \$5153.44.

The landlords testified that the unpaid rent pertains to rent not paid in 2016, 2017 and 2018; however, in the evidence served upon the tenant the landlords only provided a detailed listing of rent payments in the year 2018.

The tenant testified that he thought the 10 Day Notice would have been considered under dispute because he had filed a previous Tenant's Application for Dispute

Resolution on July 2, 2020 to dispute a 1 Month Notice issued on May 31, 2020. The tenant orally provided the file number for the tenant's previous Application for Dispute Resolution which I have recorded on the cover page of this decision. I reviewed the previous Application for Dispute Resolution and the decision during the hearing. I noted that the tenant had filed to dispute a 1 Month Notice dated May 31, 2020. The tenant did not submit an Amendment to add the 10 Day Notice received on July 7, 2020. The tenant appeared at the hearing of July 31, 2020. The Arbitrator recorded that the tenant was unable to prove he served the landlord with his proceeding package and then the tenant left the teleconference call and did not return. The Arbitrator did not indicate that the tenant sought to amend the Application for Dispute Resolution during that hearing to deal with the 10 Day Notice received on July 7, 2020. The Arbitrator dismissed the tenant's Application for Dispute Resolution with leave to reapply. The tenant did not reapply to dispute the 1 Month Notice dated May 31, 2020 or the 10 Day Notice received July 7, 2020. Rather, the subsequent Application for Dispute Resolution filed by the tenant pertains to a 1 Month Notice received on August 17, 2020.

I informed the parties that there is nothing before me that indicates the tenant disputed the 10 Day Notice and the tenant acknowledged that he did owe rent for a number of months but that he did not believe it was 11 months.

The landlord's detailed listing of rent payments received in 2018 was reviewed by the tenant. The tenant acknowledged he failed to pay rent for January 2018 through April 2018 as indicated on the landlord's listing but the tenant pointed out that he made a double payment in May 2018 so the extra amount satisfied the payment for April 2018. The landlord recorded the double payment in May 2018 as satisfying rent for May 2018 and June 2018 and no other payment was received in June 2018.

With respect to rent for December 2018 the tenant was of the position that was paid on November 27, 2018 and that the payments received by the landlord late in the month in August 2018 through November 2018 actually satisfied rent for the months of September through December 2018. The landlord responded by acknowledging if that is the case then he did not receive rent for August 2018 because the immediately proceeding rent payment was on July 6, 2018 and that satisfied July 2018 rent.

The landlords testified that the remainder of the unpaid rent indicated on the 10 Day Notice pertained to unpaid rent in 2016 and 2017. Since the landlords only gave particulars concerning unpaid rent in 2018 the tenant indicated he had not come prepared to respond to claims he failed to pay rent in 2016 and 2017. I was also of the view that to expect the tenant to be prepared to respond to claims from 2016 and 2017

by way of this Application for Dispute Resolution without a detailed listing like the one prepared for 2018 was unfair and I limited the submissions to unpaid rent for 2018.

The tenant indicated he had done some work on the property but I did not explore this position further with the landlords because the tenant described his efforts as being a favour to the landlords since they had allowed him to pay rent late. The tenant did not describe any agreement whereby the landlord agreed to compensate the tenant by way of waiving any rent entitlement.

During the hearing, I informed the parties that I was satisfied the tenancy has come to an end due to unpaid rent. I explored the effective date for the Order of Possession. The tenant testified that he did pay rent for September 2020 on September 8, 2020. The landlord acknowledged she had not checked her bank account since September 8, 2020.

As for the landlord's request for utilities, the landlord testified that on July 7, 2020 he gave the tenant a spreadsheet from BC Hydro showing the hydro charges throughout the tenancy when he served the tenant with the 10 Day Notice. The tenant denied receiving the spreadsheet and testified he received a handwritten note from the landlord saying he owed more than \$5000 in hydro charges but that he has never seen a billing from BC Hydro to support the amount charged by the landlord. As for any prior documentation concerning the hydro charges, the landlord acknowledged that he had never given the tenant anything in writing before July 7, 2020 and that he had only verbally asked that the tenant add \$100.00 onto the rent for hydro. I did not pursue the hydro claim any further as I was unsatisfied the tenant had received any hydro billings or details of the BC Hydro charges such as the spreadsheet. I informed the parties that if the landlords expect the tenant to compensate them for BC Hydro billings that it is reasonable that they first provide the tenant with evidence showing the amount charged to them by BC Hydro.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the

tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

It is undisputed that a 10 Day Notice was served upon the tenant on July 7, 2020. The tenant did not file to dispute the 10 Day Notice.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$450.00 on the first day of every month. The landlord provided a listing of rent received on certain dates in 2018. The parties provided consistent submissions that the tenant paid rent by direct deposit yet the tenant did not provide evidence to suggest the landlords received more payments than that reflected on the listing.

The tenant pointed to making a “double payment” in May 2018 and I find that is reflected in the landlord's records. Whether the extra amount was applied to April 2018 rent, as submitted by the tenant, or to June 2018 rent, as recorded by the landlord, it is inconsequential because it does not change the total amount received by the landlord. The tenant also pointed out that payments made in late August 2018, September 2018, October 2018 and November 2018 were to be applied to the subsequent months; whereas, the landlord applied the payment to the month in which the payments were received and this also is of no consequence since it does not change the amount of rent received by the landlord. In other words, the tenant failed to pay rent for the equivalent of five months in 2018, which amounts of \$2250.00.

The tenant acknowledged he owed the landlords rent in 2018 and even after serving the tenant with the 10 Day Notice, the tenant admittedly did not pay anything to the landlord toward the arrears. As such, I find there was no attempt on the tenant's part to pay the outstanding rent and even if there is a discrepancy in the total amount reflected on the 10 Day Notice there remained outstanding rent for several months. Therefore, I find I am satisfied this tenancy has ended due to unpaid rent.

Since the 10 Day Notice was received on July 7, 2020 the notice was set to take effect 10 days later, on July 17, 2020. As such, I find the tenancy ended on July 17, 2020. I give the tenant the benefit of his testimony that he has paid for occupancy for the month of September 2020 by way of a deposit made on September 8, 2020 and I provide the landlords with an Order of Possession effective September 30, 2020.

As for the landlord's monetary claim, I am satisfied by the submissions before me that the landlords are entitled to recover five months of rent for 2018, which equals \$2250.00.

The landlords did not provide a detailed listing of the rent payments received in 2016 and 2017 and I find the claims for unpaid rent in those years to be not sufficiently supported and I did not consider them further in this proceeding. Accordingly, I dismiss any claim for unpaid rent in those years with leave to reapply.

As for the claim to recover hydro charges from the tenant, I am unsatisfied the tenant has been provided with a written demand for payment that is supported by BC Hydro billings or records and I find it reasonable that he be provided with such evidence. Therefore, I dismiss the landlords claim for hydro costs with leave to reapply.

The landlord's application had merit and I award the landlords recovery of the \$100.00 filing fee they paid for their Application for Dispute Resolution.

In keeping with the above, I provide the landlords with a Monetary Order for unpaid rent for 2018 in the amount of \$2250.00 and \$100.00 for recovery of the filing fee. The balance of the landlord's monetary claims are dismissed with leave to reapply.

### Conclusion

The landlords are provided an Order of Possession effective on September 30, 2020. The landlords are provided a Monetary Order in the sum of \$2350.00 and the balance of the landlord's monetary claims are dismissed with leave to reapply.

The tenant's Application for Dispute Resolution was not served upon the landlords and it was dismissed without leave since the tenancy has already ended.

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: September 25, 2020

---

Residential Tenancy Branch