



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FFT  
OPR-DR-PP, OPRM-DR, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlords. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of the application. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant. The landlords' application was made by way of the Direct Request process, which was referred to this participatory hearing, joined to be heard with the tenant's application.

The tenant and the individually named landlord attended the hearing and the landlord also represented the landlord company. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

No issues with respect to exchanging evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Have the landlords established a monetary claim as against the tenant for unpaid rent, parking, late fees and N.S.F. fees?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on September 1, 2018 and reverted to a month-to-month tenancy after August 31, 2019, and the tenant still resides in the rental unit. Rent in the amount of \$1,010.00 was payable on the 1<sup>st</sup> day of each month in addition to \$20.00 per month for parking. Rent was increased effective September 1, 2019 to \$1,035.25. At the outset of the tenancy the landlords collected a security deposit

from the tenant in the amount of \$505.00 which is still held in trust by the landlords and no pet damage deposit was collected. The rental unit is an apartment in a complex, and the landlord also resides in the complex. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that rent was always paid by automatic debit, and the landlord would issue a receipt for the payment to ensure that the tenant was aware of the rent money being taken from the tenant's account. However, each of the rent payments for June through October, 2020 were returned N.S.F. The landlord placed notices on the door of the rental unit, and returned later and they were no longer on the door on each occasion. Copies of the letters have been provided as evidence for this hearing. The tenant is in arrears the sum of \$5,526.25 for rent, parking, late fees and N.S.F. fees. The sum of \$5,176.25 of that is for unpaid rent for the months of June, July, August, September and October, 2020. The landlord contacted the Residential Tenancy Branch and was advised that due to the COVID-19 rules, the landlord could not issue a notice to end the tenancy for June to August, 2020.

On September 4, 2020 the landlord posted to the door of the rental unit a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a copy has been provided for this hearing. It is dated September 4, 2020 and contains an effective date of vacancy of September 14, 2020 for unpaid rent in the amount of \$1,055.25 + \$50.00 that was due on September 1, 2020. The \$50.00 on the Notice is for late fees and N.S.F. fees, which is contained in the tenancy agreement and it states: "12. RENT ARREARS. By law and as required by this Agreement, the tenant must pay rent in full on or before the date it is due. The tenant may be charged an administration fee of up to \$25.00 for late payment of all or a portion of the rent, returned or NSF cheques, plus any service fees charged to the landlord by a financial institution."

On June 14 the landlord spoke to the tenant who said that he had no intention of moving out and that he would pay when he got a job. On July 18, 2020 the tenant said that he had been unemployed since October and had a lot of bills and knew he couldn't be evicted because of COVID-19. On July 20, 2020 the tenant said he had no money for rent and was still trying to get the rent money. On July 28, 2020 the tenant told the landlord that he was still trying to come up with the rent owed and doesn't have to pay until September, 2020 and mentioned a payment plan.

The landlord gave the tenant a payment plan for rent owed from June to August, 2020 which totalled \$3,165.75. The payment plan was for \$316.57 until July next year starting October 1, 2020, but the tenant didn't pay that either. A copy of the payment plan has been provided for this hearing which is signed by the landlord and dated August 18, 2020.

The landlord seeks an Order of Possession and a monetary order for the unpaid rent, late fees, NSF fees and parking for a total of \$5,526.25.

**The tenant** testified that he always paid the rent and never received any of the notices from the landlord that rent was missing until he received the notice to end the tenancy on September 4, 2020. The tenant switched banks in May, his financial institution having closed in May, and the landlord said that the tenant could pay in cash, which he did commencing June 1, 2020. The tenant has provided copies of receipts dating back to 2018, all of which indicate the payment type is a pre-authorized debit.

The tenant received a receipt for October's rent on October 23, 2020 which has NSF written across it but it was too late to provide a copy of that for this hearing. None of the other receipts state NSF.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*.

I have reviewed all of the evidence of the parties, and it is clear that the landlord issued receipts when the pre-authorized debits were made. However, the landlord has also provided evidence that each of them was returned for insufficient funds for June through August, 2020. The tenant testified that he made the payments in cash, but has provided no evidence of that. The tenant relies on the receipts given by the landlord, but agrees that the pre-authorized debits written on each receipt were not collected by the landlord due to the tenant's bank closing. Although a landlord may not refuse cash, I am not satisfied that the tenant has paid any of the rent. The tenant received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities but testified that he didn't receive any of the previous notes that the landlord posted to the door of the rental unit.

In the circumstances, I am satisfied that the tenant's rent was not collected by the landlord, and the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed. I further find that the landlord is entitled to an Order of Possession. Since the effective date of vacancy contained in the Notice has passed, I grant the Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I also find that the tenant is in arrears the sum of **\$5,176.25**, as well as **\$125.00** for late fees.

With respect to the landlord's claim for NSF fees, the regulations respecting residential tenancies specifies that a landlord may charge:

- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent.

The landlord has not provided any evidence or testimony with respect to the service fee charged by a financial institution to the landlord for the return of the rent payments, and I find that the landlord is not entitled to recovery of both the late fee and NSF fee.

The tenancy agreement specifies \$20.00 per month for parking, and I find that the landlord has established a claim of **\$100.00** for the months of June through October, 2020 inclusive.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$5,501.25**.

This order is final and binding and may be enforced.

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: October 29, 2020

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Residential Tenancy Branch