



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      OPR-DR, OPRM-DR, FFL / OPR-DR, OPRM-DR, FFL / CNR

### Introduction

This hearing dealt with three applications pursuant to the *Residential Tenancy Act* (the “**Act**”). Two applications of the landlords (in which they sought identical relief) for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$2,300 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And one application of the tenants for the cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46.

The tenants attended the hearing. The landlord GZ attended the hearing and was represented an agent (“**SC**”). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and SC confirmed, that the tenants served the landlords with the notice of dispute resolution form and supporting evidence package. SC testified, and the tenants confirmed, that the landlords served the tenants with their notice of dispute resolution form and supporting evidence package. I find that all parties have been served with the required documents in accordance with the Act.

### **Preliminary Issue – Amendment to Increase Amount Claimed**

At the hearing the landlords sought to further amend the application to include a claim for October and November 2020 rent which remains outstanding.

Rule of Procedure 4.2 states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlords are seeking compensation for unpaid rent that has increased since the application for dispute resolution was made. The increase in the landlords' monetary claim should have been reasonably anticipated by the tenants. Therefore, pursuant to Rule 4.2, I order that the landlords' application be amended to include a claim for October and November 2020 rent (\$4,600).

### **Issues to be Decided**

Are the landlords entitled to:

- 1) an order of possession;
- 2) a monetary order for \$6,900; and
- 3) recover their filing fees?

Are the tenants entitled to:

- 1) an order cancelling the Notice?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Landlord GZ and the late husband of JP entered into a written tenancy agreement starting March 1, 2016. Monthly rent is \$2,300 and is payable on the first of each month. GZ passed away in 2017 and the tenants (JP and her son) have resided in the rental unit since his passing and assumed the tenancy agreement. The landlords hold a security deposit of \$1,150 in trust for the tenants.

The parties agree on all the following:

- The parties were involved in a prior hearing before the RTB in August 2020, following which the presiding arbitrator issued a monetary order for \$7,200 for rental arrears for May to August 2020.
- The parties have not yet entered into a repayment plan (as required by COVID-19 (*Residential Tenancy Act* and *Manufactured Home Park Tenancy Act*) (NO. 2) Regulation) for the amount ordered to be repaid.
- On September 9, 2020, the landlord posted the Notice on the door of the rental unit. It specified an effective date of September 22, 2020. The Notice stated that \$2,300 in rent was owed as of September 1, 2020.
- The tenants have not paid any rent for the months of September, October, or November 2020.

The tenants testified that COVID-19 impacted them significantly. DP testified that the tenants had to support some of their family in Bali during that time, and that this strained their finances. He testified that he was in the process of obtaining a new job and

anticipated he would receive a sizable signing bonus later this month and would be able to repay the arrears for September, October, and November 2020.

### **Analysis**

In accordance with sections 88 and 90 of the Act, I find that the tenant was served with the Notice on September 12, 2020.

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord must satisfy me that the tenant has failed to pay September, October, and November 2020 rent when it was due.

Section 27 of the Act requires tenants to pay rent when it is due. The tenants have testified that they breached this section of the Act by failing to pay September, October, or November 2020 rent, and owe rental arrears of \$6,900 for this period of time.

Section 46(1) of the Act states:

#### **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.

The landlords availed themselves of this section and issued the Notice.

Section 55 of the Act states:

#### **Order of possession for the landlord**

**55(1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the Notice was issued validly, and the tenants have not paid the rental arrears within five days of receiving the Notice, or at all, I dismiss their application without leave to reapply.

I find that the Notice complies with the form and content requirements of section 52. Accordingly, I grant the landlord an order of possession against the tenant effective seven days after service of this order by the landlords on the tenants.

The Act does not permit a tenant to withhold rent due to their financial troubles and does not permit an arbitrator the authority to extend the time within which rent is payable.

As the tenants owe \$6,900 in arrears, I order, pursuant to section 67 of the Act, that they pay this amount to the landlords.

The landlords have been successful in both their applications. However, as one of the applications was brought unnecessarily, I decline to award them the filing fee for both. Rather, pursuant to section 72(1) of the Act, the landlord may recover their filing fee of one application (\$100) from the tenants.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

### **Conclusion**

I dismiss the tenants' application without leave to reapply.

Pursuant to sections 38, 67, and 72 of the Act, I order that the tenants pay the landlords \$amount, representing the following:

Arrears (Sept to Nov)	\$6,900.00
Filing Fee	\$100.00
Security Deposit credit	-\$1,150.00
<b>Total</b>	<b>\$5,850.00</b>

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within seven days of being served with a copy of this decision and attached orders by the landlord.

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: November 6, 2020

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Residential Tenancy Branch