



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, FFT  
OPU-DR-PP, OPUM-DR, FFL, MNRL, MNDCL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An order for the Landlord to comply with the Act, regulation or tenancy agreement; and
- Recovery of the filing fee.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

This hearing also dealt with a Cross-Application for Dispute Resolution (the Cross-Application) that was filed by the Landlord under the Act, seeking:

- An Order of Possession based on the 10 Day Notice;
- Recovery of outstanding rent and utilities;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, and a support person for the Landlord, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although the phone line remained open for 79 minutes, neither the Tenant nor an agent for the Tenant attended.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) states that the dispute resolution hearing will commence at the scheduled

time unless otherwise set by the arbitrator. As the Landlord and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 11:00 A.M. on December 7, 2020. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. Although the line remained open for 79 minutes, neither the Tenant nor an agent acting on their behalf appeared to provide any evidence or testimony for my consideration in relation to the Tenant's Application. As a result, and pursuant to rule 7.3 of the Rules of Procedure, I therefore dismiss the Tenant's Application in its entirety without leave to reapply.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord testified that their documentary evidence and the Notice of Dispute Resolution Proceeding Package, including a copy of the Cross-Application and the Notice of Hearing were sent to the Tenant by registered mail on September 26, 2020, at the rental unit address. The Landlord provided me with the registered mail tracking number, which has been recorded on the cover page for this decision, and the Canada Post website confirms that the registered mail was sent as described above and delivered on September 28, 2020. As a result, I find that the Tenant was served in accordance with the Act, on September 28, 2020.

Based on the above, the hearing proceeded as scheduled with regards to the Landlord's Cross-Application despite the absence of the Tenant pursuant to rule 7.3 of the Rules of Procedure.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Cross-Application.

### Preliminary Matters

An Amendment to the Cross-Application was filed by the Landlord with the Branch on October 26, 2020, seeking to increase the amount of their monetary claims to \$20,486.32 for additional rent and utilities owed, interest from their bank for mortgage payments not made, and recovery of registered mail costs. The Landlord stated that they sent the Amendment to the Tenant at the rental unit by registered mail on October 22, 2020, and provided me with the registered mail tracking number, which has been recorded on the cover page of this decision. Although Canada Post tracking information shows that the registered mail was sent as described above, it indicates that it was never picked up and the Landlord stated that they suspect that the Tenant had already vacated the rental unit by that time as another occupant of the property advised them that they had not seen them around.

Based on the above, I am not satisfied that the Tenant was served with the Amendment as required and I therefore decline to amend the Application to include interest from the Landlord's bank for mortgage payments not made. However, rule 4.2 of the Rules of Procedure states that 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. I therefore amended the Cross-Application at the hearing to include \$2,790.00 in additional rent and \$136.03 in additional utilities now owed as well as \$13.59 in registered mail costs.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the Landlord entitled to recovery of outstanding rent and utilities?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on February 1, 2020, for a month to month tenancy commencing February 2, 2020, states that rent in the amount of \$2,790.00 is due on the first day of each month. It also states that the Tenant is responsible for 60% of the heat and electricity bills and that a

\$1,395.00 security deposit is to be paid. During the hearing the Landlord confirmed that these are the correct terms for the tenancy agreement and that they still hold the \$1,395.00 security deposit in trust. The Landlord requested that the security deposit not be dealt with as part of their Cross-Application.

The Landlord stated that since the tenancy began, the Tenant has failed to pay 60% of electricity bills and 60% of heating bills as required. The Landlord stated that the Tenant has also had difficulty paying rent since April 2020, as they paid only \$1,500.00 per month for April, May, June, July and August of 2020, and no rent at all for September, October, or November 2020.

The Landlord stated that as a result, the Tenant currently owes \$870.09 in outstanding utilities, \$8,370.00 in outstanding unaffected rent for September – November 2020, and \$6,450.00 in affected rent for April -August 2020. The Landlord stated that although a repayment plan in compliance with the COVID 19 Regulation was completed and personally served on the Tenant on August 25, 2020, the Tenant failed to make the first repayment plan installment of \$714.27 which was due on October 1, 2020, and has not made any subsequent repayment plan installment payments. As a result, The Landlord sought a monetary order for all outstanding rent in the amount of \$14,820.00, plus the \$870.09 owed for unpaid utilities. The Landlord also sought \$13.59 for recovery of amounts spent to send the Tenant registered mail in relation to the hearing.

Although the Landlord stated that a 10 Day Notice was personally served on the Tenant on September 11, 2020, which the Tenant confirmed in their own Application, neither the Landlord nor the Tenant submitted a full copy of the 10 Day Notice for my review as part of their Applications. The Landlord submitted only the first of three pages of the 10 Day Notice, which is signed and dated September 11, 2020, and contains the address for the rental unit but no effective date for the notice to end tenancy. The second and third pages, which contain information about what amount of rent and utilities were owed and when, and information for the parties regarding enforcement or dispute of the 10 Day Notice, were not submitted. In any event, the Landlord stated that they suspect that the Tenant has abandoned the rental unit as the Tenant has not been seen on the property by another occupant recently and all of their belongings have been removed from the garage.

In support of this testimony the Landlord provided a copy of the tenancy agreement, copies of the utility bills, a copy of the repayment plan, copies of correspondence regarding outstanding rent and utilities owed, copies of demand letters for the payment

of rent and utilities, a Monetary Order Worksheet, a registered mail receipt, a witnessed proof of service for the 10 Day Notice, and the first page of the 10 Day Notice.

No one appeared at the hearing on behalf of the Tenant to provide any evidence or testimony either in regard to the Tenant's Application or the Landlord's Cross-Application.

### Analysis

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. The Landlord testified during the hearing that the Tenant currently owes \$14,820.00 in outstanding rent and the Tenant did not appear at the hearing to dispute this testimony or provide any evidence or testimony that they had a right under the Act to deduct or withhold this rent. As a result, I find that the Tenant owes \$14,820.00 in outstanding rent. I am also satisfied based on the uncontested documentary evidence and affirmed testimony before me from the Landlord that the Tenant owes \$870.09 in unpaid utilities.

Although I dismissed the Tenant's Application seeking cancellation of the 10 Day Notice, I decline to grant the Landlord an Order of Possession for the rental unit based on the 10 day Notice pursuant to section 55 of the Act, as neither the Landlord nor the Tenant submitted a complete copy of the 10 Day Notice for my review and the first page of the 10 Day Notice submitted by the Landlord does not have an effective date for the 10 Day Notice. As a result, I find that it does not comply with section 52 of the Act.

In any event, I am satisfied based on the Landlord's affirmed and uncontested testimony that the Tenant has abandoned the rental unit and that the tenancy has therefore already ended pursuant to section 44(1)(d) of the Act. The Landlord must deal with any abandoned personal property in accordance with the regulations.

As I have found that the tenancy has already ended, I therefore award the Landlord full recovery of rent and utilities owed, including affected rent. Although the Landlord also sought recovery of registered mailing fees pursuant to section 7 of the Act, I find that there were free or more cost effective methods of service under the Act available to the Landlord, such as personal service. As a result, I do not find that the Landlord is entitled to recovery of the registered mail fees sought, as this loss is the result of the Landlord's choice to serve documents on the Tenant by registered mail, not a breach of the Act,

regulation, or tenancy agreement by the Tenant. I therefore dismiss this portion of the Landlord's claim without leave to reapply.

As the Landlord was largely successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act I therefore grant the Landlord a Monetary Order in the amount of \$15,790.09 for unpaid rent, unpaid utilities, and recovery of the filing fee.

### Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$15,790.09**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Although this decision has been rendered outside of the timelines set forth in section 77(1)(d) of the Act and section 25 of the Interpretation Act, I note that section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that I have not lost authority to render this decision and that the validity of the decision is unaffected despite having been rendered more than 30 days after the close of the proceedings.

Dated: December 8, 2020

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Residential Tenancy Branch