



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      OPR-DR-PP, OPRM-DR, FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$925 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This matter was reconvened from an *ex parte*, direct request proceeding. In an interim decision dated October 7, 2020, the presiding adjudicator determined that a participatory hearing was necessary to address the issues raised in the application.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:32 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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.

The landlord testified she served that the tenant with the notice of reconvened hearing and interim decision within three days of receiving the interim decision by posting it to the door of the rental unit. She testified that she served an amendment to the application form and the supporting evidence package by posting it on the door of the rental unit on November 28, 2020. At the hearing, I allowed the landlord to upload a proof of service of evidence form, confirming service of the evidence package and amendment form, signed by her husband. I find that the tenant has been served with the required documents in accordance with the Act.

### **Preliminary Issue – Amendment**

In her evidence package, the landlord included a form RTB-42L Landlord: Amend an Application for Dispute Resolution (the "**Amendment**"). She testified that she was not certain if she filed the Amendment with the RTB prior to the hearing. In the Amendment, the landlord sought to increase her monetary claim for unpaid rent from \$925 to \$4,225,

representing unpaid rent for September to December 2020 and the full amount of rent owing under a repayment plan for August 2020.

In addition, the landlord sought to add a claim for \$750 representing unpaid rent of \$125 per month for an office space attached to the rental unit (the “**Office**”) which she testified the parties agreed would be included in the tenancy agreement, by way of an addendum which the tenant, after moving into the Office, refused to sign. The landlord testified that the tenant has not paid any portion of the amount owing for use of the Office since the start of the tenancy (July 1, 2020).

The landlord also sought to add a claim for \$123.38, representing the recovery of the filing fee and registered mail charges incurred in the course of prosecuting this claim.

There is no record of the landlord filing the Amendment at the RTB. It is only included in the evidence package which the landlord uploaded to the RTB evidence portal.

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.

The landlord testified that she served the tenant with a copy of the Amendment on November 28, 2020 and that he is deemed served with the Amendment on December 1, 2020 (per section 90 of the Act). As such, I find that the tenant had notice of the Amendment and could have reasonably anticipated that the application would be amended as set out in the Amendment at the hearing.

However, the landlord has already applied to recover the filing fee for this application, and the Act does not allow a landlord to recover disbursements (such as registered mailing costs) incurred in the course of prosecuting a claim. As such, I decline to amend the application to include a claim for these amounts.

I grant the amendments for additional rent and rent for the Office, as sought.

#### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession;

- 2) a monetary order for \$4,975; and
- 3) recover the filing fee.

### **Background and Evidence**

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

The parties entered into a written tenancy agreement on June 13, 2020. The tenancy started on July 1, 2020. The tenancy agreement states that monthly rent is \$925 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$462.50. The landlord still retains this deposit.

The landlord testified that the rental unit is a basement suite in a single-detached house. The upper floor is another rental unit. In addition to these two units, the residential property has the Office located on the lower level, which is separate, but accessible from and adjacent to the rental unit. The Office can also be accessed from the upper unit. The landlord testified that the Office can be rented by either the upper or lower tenant to include as part of their rental unit.

The landlord testified that, when the parties were negotiating the tenancy agreement, the tenant stated that he did not need to rent the Office. Accordingly, the landlord did not prepare the tenancy agreement so that it specified that the tenant may have use of the Office. However, she testified that, after signing the tenancy agreement, but prior to moving in, the tenant changed his mind and said that he required use of the Office. Accordingly, the landlord prepared an addendum to this effect. The tenant then moved into the rental unit and occupied the Office.

The landlord testified that the parties had not agreed on a price to occupy the Office prior to his moving in. After he moved in, they verbally agreed to a price of \$125 per month. She testified that, despite this agreement, the tenant refused to sign the addendum she prepared.

On July 29, 2020, the landlord emailed the tenant:

In response to your email, if you wish to continue with the original tenancy agreement you are welcome to do that BUT if [sic] would be without office access.

The Castanet ad I posted inline was for a 1 bedroom suite – the only mention of an office being: “possible” – (negotiable). This matter was raised when we met to sign the tenancy agreement and was flatly refused.

Approaching move-in long after original documents had been signed you readdress the issue saying the 'office' was desired and indeed "needed", so I drew up an addendum. At this stage you moved in. Upon returning to formalize the agreement we began a discussion on the terms and you agreed to \$125.00/month, having originally offered \$100.00/month. The documents then did not get signed. It is now July 29<sup>th</sup> and no rent for said space has been received, and no addendum signed.

If you do not wish to formalize this, I request you vacate the said room and remove your furniture by August 5/2020.

The landlord testified that the tenant did not reply.

She testified that that the tenant has not paid any amount for use of the Office since the start of the tenancy (\$750).

The landlord testified that the tenant did not pay any rent for August 2020. She issued a repayment plan for arrears of \$925 on August 31, 2020, with payments of \$92.50 starting on October 1, 2020 and continuing until July 1, 2021. She testified that she did not include the Office rent in the amount of arrears, as she intended, if necessary, to end the tenancy by direct request and wanted to keep her monetary claim restricted to only what was written in the tenancy agreement.

The tenant did not pay any rent on September 1, 2020. On September 2, 2020, the landlord served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent (the "**Notice**") with an effective date of September 15, 2020. The Notice listed the arrears as \$925. The landlord testified that, as with the repayment plan, she did not list the arrears for the Office, as she wanted to end the tenancy by way of a direct request, rather than by a participatory hearing.

The tenant did not pay any amount of September rent, and did not file to dispute the Notice.

The landlord testified that the tenant did not pay October rent when it was due, and that on October 9, 2020 paid her \$400 cash. She sent the tenant a confirmation email that evening in which she wrote:

Friday October 9, 2020 – received from [tenant] the sum of \$400 being the first instalment of monies owing relating to [the rental unit].

As requested the total remaining balance outstanding as of this date is \$2,875 (\$3,275 - \$400). This includes the total of the monies in the repayment plan that you requested I include.

The landlord also sent the tenant a text message on October 9, 2020 stating:

I have sent an email to you but in simple terms the outstanding debt at this time is \$2,875.

The tenant responded to this text: "K pay you next week".

The landlord testified that the amounts in the email and text message reflect the amount of monthly rent listed in the tenancy agreement plus the amount the tenant verbally agreed to pay for the Office (\$1,050 x 3 months arrears = \$3,150; plus \$125 for Office in July; minus \$400 payment on October 9, 2020 = \$2,875).

The landlord testified the tenant has made no further rent payments for any months since October 9, 2020 and has not made any payments under the repayment plan. She testified that the tenant has not notified her of his intention to leave the rental unit, and, to her knowledge, the tenant continues to reside in the rental unit.

In total, the landlord's monetary claim is for \$4,975, calculated as follows:

Description	Date	Amount Due	Amount Paid	Balance Owing
Tenancy Agreement Rent	01-Jul-20	\$925		\$925
Office Rent	01-Jul-20	\$125		\$1,050
Payment	01-Jul-20		\$925	\$125
Tenancy Agreement Rent	01-Aug-20	\$925		\$1,050
Office Rent	01-Aug-20	\$125		\$1,175
Tenancy Agreement Rent	01-Sep-20	\$925		\$2,100
Office Rent	01-Sep-20	\$125		\$2,225
Tenancy Agreement Rent	01-Oct-20	\$925		\$3,150
Office Rent	01-Oct-20	\$125		\$3,275
Payment	09-Oct-20		\$400	\$2,875
Tenancy Agreement Rent	01-Nov-20	\$925		\$3,800
Office Rent	01-Nov-20	\$125		\$3,925
Tenancy Agreement Rent	01-Dec-20	\$925		\$4,850
Office Rent	01-Dec-20	\$125		\$4,975
			<b>Total</b>	<b>\$4,975</b>

## **Analysis**

### **1. Order of Possession**

Sections 46(4) and (5) of the Act states:

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

- 46(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.

The Notice is deemed served on September 5, 2020 (three days after it was posted on the door of the rental unit). The tenant therefore must either pay the arrears or dispute the Notice by September 10, 2020. The tenant did neither of these.

I find that the notice complies with the form and content requirements of section 52. As such, I find that the tenancy is conclusively presumed to have ended on the effective date of the Notice, September 15, 2020.

Accordingly, I issue the landlord an order of possession effective two days after the landlord serves it on the tenant at 1:00 pm.

## **2. Monetary Order**

Based on the testimony of the landlord, and on the email and text messages submitted into evidence, I find that the parties verbally agreed that the tenancy agreement should be amended to allow the tenant to use the Office in exchange for paying an additional \$125 per month. I rely on the fact that, on October 9, 2020, the tenant acknowledged and agreed to pay rental arrears, the sum of which was calculated based on the inclusion of the use of the Office for an additional \$125 per month.

I accept the landlord's explanation as to why she did not include the Office rental arrears in the repayment plan or on the Notice. It is not unreasonable for a landlord to be willing to forgo a portion of monies owed in exchange for being able to proceed with an application for an order of possession by way of a direct request proceeding. Proceeding in this manner is much quicker, and, if successful, allows the landlord to evict the tenant earlier than a participatory application would.

As stated above, I find that the tenant rented the Office in addition to the rental unit. I find that the combined monthly rent was \$1,050. I accept the landlord's undisputed evidence that since the start of the tenancy, the tenant has only paid \$925 on July 1, 2020 and \$400 on October 9, 2020. As such, I find that the tenant owes \$4,975 in rental arrears, as follows:

Description	Date	Amount Due	Amount Paid	Balance Owing
Rent	01-Jul-20	\$1,050		\$1,050
Payment	01-Jul-20		\$925	\$125
Rent	01-Aug-20	\$1,050		\$1,175
Rent	01-Sep-20	\$1,050		\$2,225
Rent	01-Oct-20	\$1,050		\$3,275
Payment	09-Oct-20		\$400	\$2,875
Rent	01-Nov-20	\$1,050		\$3,925
Rent	01-Dec-20	\$1,050		\$4,975
			<b>Total</b>	<b>\$4,975</b>

Section 26(1) of the Act states:

**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.

The tenant has failed to do this. As such, he is obligated to pay the full amount of rental arrears.

I note that, in compliance with *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation* (the “**C19 Tenancy Regulation**”), the landlord issued a payment plan for the repayment of affected rent (that is August 2020 rent). I note that, since the tenancy has now ended, the payment plan is void, and the full amount of arrears for August 2020 rent is owing, per Policy Guideline 52.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she may recover the filing fee from the tenant.

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**

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$4,612.50, representing the following:

Rental Arrears	\$4,975.00
Filing Fee	\$100.00
Security Deposit Credit	-\$462.50
<b>Total</b>	<b>\$4,612.50</b>

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord at 1:00 pm.

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: December 14, 2020

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Residential Tenancy Branch