



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDCL, CNL, OLC, FF

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On October 12, 2020, the Tenant applied to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property and for an order for the Landlord to comply with the Act, Regulation, or tenancy agreement.

On November 4, 2020, the Landlords applied requesting an order of possession based on issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a monetary order for unpaid rent.

The matter was set for a conference call hearing. The Tenant and Landlords attended the hearing. I introduced myself and the participants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present oral testimony and to make submissions during the hearing.

### Preliminary and Procedural Matters

On November 20, 2020 the Landlord and Tenant participated in a dispute resolution hearing and reached a settlement agreement as follows:

*Both parties agreed to the following final and binding settlement:*

- *The tenant agrees to provide the landlord with vacant possession of the subject rental property by 1:00 P.M. on December 28, 2020.*
- *Both parties are at liberty to submit applications for monetary compensation regarding the tenancy.*
- *The tenant will pay the utilities until the move out date.*

*To give effect to the settlement reached between the parties and as discussed with them during the hearing, pursuant to section 63(2) of the Act, I issue an order of possession to the landlord, which is to take effect by 1:00 P.M. on December 28, 2020.*

I find that the tenancy ended on December 28, 2020 in accordance with the settlement agreement and section 44(1)(c) of the Act.

A tenancy can only end once. Since the tenancy has already ended and the Landlord was provided with an order of possession for the rental unit, there is no need to determine whether or not the tenancy is ending based on a Two Month Notice to End Tenancy for Landlord's Use of Property or a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenant's application is dismissed.

The hearing proceeded on the remaining claim made by the Landlord for a monetary order for unpaid rent and to keep the security deposit in partial satisfaction of the claim.

The Landlord corrected the spelling of the Tenants surname within the application and asked that the application be amended.

#### Issue to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?

#### Background and Evidence

The Landlord and Tenant testified that the tenancy began on October 2019 as a six-month fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,900.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$950.00.

The Landlord testified that the Tenant failed to pay the rent due under the tenancy agreement for the months of September 2020, October 2020, and November 2020. The Landlord is seeking a monetary order for unpaid rent in the amount of \$5,700.00. The Landlord testified that there is other unpaid affected rent owing; however, the Landlord did not include that claim in this application.

In reply, the Tenant testified that he did not pay the rent owing under the tenancy agreement for the three months listed above because of covid 19. He testified that he had no work.

The Tenant also testified that he believes the Landlord owes him compensation for personal items that were stolen during an open house that was held by the Landlord. The Tenant stated that his claim for compensation is another reason why the rent was not paid.

### Analysis

Section 26 of the Act provides that 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.

Based on the above, the testimony of the parties, and on a balance of probabilities, I find as follows:

The tenancy agreement requires the Tenant to pay rent of \$1,900.00 by the first day of each month. I find that the Tenant failed to pay the rent owing under the tenancy agreement for the months of September 2020, October 2020, and November 2020.

I find that the Tenant's submission that the Landlord owes him compensation for stolen items has not been proven. On November 20, 2020 the Tenant was given leave to reapply for compensation on that issue but the Tenant has not applied. I find that there is no legal right under the Act for the Tenant to have withheld payment of the rent.

I find that the Tenant owes the Landlord \$5,700.00 in unpaid rent for the above-mentioned months. The Landlord has leave to reapply for a monetary order for the other rent that was not included in the Landlords' application.

I authorize the Landlord to keep the security deposit of \$950.00 towards the award for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords application for a monetary order was successful, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

After setting off the security deposit of \$950.00 towards the award of \$5,800.00 I find that the Tenant owes the Landlord the amount of \$4,850.00.

I grant the Landlords a monetary order in the amount of \$4,850.00.

Conclusion

The Tenant failed to pay the rent owing under the tenancy agreement for three months and did not have a legal reason to withhold payment of the rent.

After setting off the security deposit, I grant the Landlord a monetary order in the amount of \$4,850.00.

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: January 07, 2021

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Residential Tenancy Branch