



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC, LRE, DRI, OPR, OPN, OPB, OPM, MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with cross-applications filed by the parties. On October 14, 2020, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, and seeking to dispute a rent increase pursuant to Section 41 of the *Act*.

On October 25, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*, seeking an Order of Possession based on a Tenant’s Notice to End Tenancy pursuant to Section 45 of the *Act*, seeking an Order of Possession based on a breach of a vacate clause pursuant to Section 55 of the *Act*, seeking an Order of Possession based on a mutual agreement to end tenancy pursuant to Section 55 of the *Act*, seeking a Monetary Order for compensation for the unpaid rent and damages pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant did not attend the hearing at any point during the 67-minute hearing. The Landlord attended the hearing with J.C. attending as an agent for the Landlord. All parties in attendance provided a solemn affirmation.

As the Tenant did not attend the hearing, I dismiss her Application without leave to reapply.

The Landlord advised that the Tenant was served the Notice of Hearing package and some evidence by registered mail on October 29, 2020 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was delivered on October 30, 2020. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was sufficiently served the Notice of Hearing package and evidence. As such, I have accepted the evidence that the Landlord served in this package, and this evidence will be considered when rendering this Decision.

The Landlord advised that she attempted to amend her Application and apply for Substituted Service on December 17, 2020. However, neither of these actions were filed properly with the Residential Tenancy Branch. As a result, neither of these were considered. In addition, the Landlord advised that she did not serve her additional evidence in this package to the Tenant. As such, I have excluded this additional evidence and will not consider it when rendering this Decision.

The Landlord advised that the Tenant gave up vacant possession of the rental unit on November 1, 2020. As such, the matter with respect to granting an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent does not need to be considered.

Furthermore, it is not clear to me why the Landlord requested Orders of Possession based on a Tenant's Notice to End Tenancy, a breach of a vacate clause, or a mutual agreement to end tenancy as it does not appear any of these issues were applicable to this tenancy. As such, these requests have been dismissed in their entirety.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the most current tenancy agreement started on April 1, 2020 as a fixed term tenancy of six months, ending on September 31, 2020. However, the tenancy ended when the Tenant gave up vacant possession of the rental unit on or around November 1, 2020. Despite the Landlord indicating on this tenancy agreement that rent was established at an amount of \$1,500.00 per month, she acknowledged that she corrected this to \$1,450.00 per month with the Tenant. Rent was due on the first day of each month.

Furthermore, despite the first tenancy agreement indicating that a security deposit of \$725.00 was paid in April 2019, she stated that the Tenant actually paid \$750.00 for a security deposit at that time, and this amount was transferred to the new tenancy agreement. She advised that she is still holding this amount in trust. Copies of the tenancy agreements were submitted as documentary evidence.

She advised that the Notice was served to the Tenant by hand on October 12, 2020. The Notice indicated that \$3,000.00 was owing for rent and that it was due on October 17, 2020. The effective end date of the tenancy was noted as October 22, 2020. She submitted that the Tenant did not pay rent for September or October 2020. In addition, she confirmed that she did not realize that she could not raise the rent, so she agreed in October 2020 to reduce the rent to the original \$1,450.00 per month. She stated that the Tenant had paid \$1,500.00 for July 2020 rent and \$1,500.00 for August 2020 rent. As such, these overpayments should be deducted from the rental arrears. She is seeking a Monetary Order in the amount as follows:

- September 2020 rent: \$1,350.00 (\$1,450.00 - \$100.00 over payments)
- October 2020 rent: \$1,450.00
- November 2020 rent: \$1,450.00
- Total rental arrears: **\$4,250.00**

On the Landlord's Application, she was also seeking compensation in the amount of **\$7,500.00** for future loss of rent and damage to the rental unit. However, these claims have been dismissed with leave to reapply.

She advised that the Tenant did not give any notice in writing to end her tenancy. However, she emailed the Landlord on August 31, 2020 advising the Landlord that she would like for November 2020 to be her last month. The Landlord accepted this email as the Tenant's notice to end her tenancy on November 31, 2020. On November 3, 2020, the Landlord stated that she received an email from the Tenant advising that she vacated the rental unit as of November 1, 2020.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant received the Notice on October 12, 2020. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenant received the Notice on October 12, 2020, she must have paid the rent in

full by October 17, 2020 or disputed the Notice by Monday October 19, 2020 at the latest. Despite the amount of rent arrears being incorrect on the Notice, the undisputed evidence is that the Tenant did not pay any rent in September or October 2020.

While the Tenant did dispute the Notice, as she did not attend the hearing, her Application was dismissed without leave to reapply. Furthermore, as the Tenant gave up vacant possession of the rental unit on or around November 1, 2020, it is unnecessary to grant the Landlord an Order of Possession.

With respect to the issue of the unpaid rent, there is no dispute that the Tenant made two over payments of \$50.00 for July and August 2020 rent. Furthermore, the Tenant did not pay any rent for September, October, or November 2020 despite giving notice to end her tenancy effective for November 31, 2020. As such, I am satisfied that the Landlord is owed the rental arrears for these months. Consequently, I grant the Landlord a monetary award in the amount of **\$4,250.00** to satisfy this claim.

The Landlord's Application for additional damages on this Application have been dismissed with leave to reapply.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of this debt outstanding.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

| Item                              | Amount            |
|-----------------------------------|-------------------|
| Rental arrears for September 2020 | \$1,350.00        |
| Rental arrears for October 2020   | \$1,450.00        |
| Rental arrears for November 2020  | \$1,450.00        |
| Filing Fee                        | \$100.00          |
| Security deposit                  | -\$750.00         |
| <b>Total Monetary Award</b>       | <b>\$3,600.00</b> |

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Based on the above, the Landlord is provided with a Monetary Order in the amount of **\$3,600.00** 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.

The Landlord's claims for additional damages are dismissed with leave to reapply.

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 7, 2021

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Residential Tenancy Branch