



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPRM-DR, OPR-DR, MNRL**

### **Introduction**

This participatory hearing was scheduled for this date, via teleconference call, pursuant to an Interim Decision issued by an Adjudicator on October 23, 2020 in response to the landlord's application for an Order of Possession and Monetary Order for unpaid rent under the Direct Request procedure. The Interim Decision should be read in conjunction with this final decision.

At the hearing, the landlords appeared along with the building manager. There was no appearance on part of the tenant.

The landlords submitted that they notified the tenant of today's hearing by sending the hearing documents registered mail to the rental unit address on October 23, 2020 and a search of the tracking number showed that the mail was delivered on October 26, 2020. I was satisfied the tenant was notified of this hearing and I continued to hear from the landlords without the tenant present.

### **Preliminary and Procedural Matters**

#### **1. Amendment of monetary claim**

The landlords submitted an Amendment to increase the monetary claim to include loss of unpaid and/or loss rent for months after they filed since the tenant continues to occupy the rental unit. The landlord testified that he served the Amendment by giving it to the tenant's boyfriend, who apparently resides with the tenant, at the rental unit on December 8, 2020. A monetary claim must be served upon the respondent in person or sent to the respondent via registered mail, as does an Amendment to a monetary claim. Giving the Amendment to the tenant's boyfriend is not sufficient service. However, Rule 4.2 of the Rules of Procedure provides as follows:

#### **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.

Having heard the tenant continues to occupy the rental unit without paying rent, or the full amount of rent, and considering the time has passed since the Application for Dispute Resolution was filed, I find it appropriate to amend the landlord's claim during the hearing to include loss of rent for subsequent months up to and including the month of January 2021.

#### **2. Naming of tenant**

This proceeding was set for a participatory hearing due to the following reason, as provided on by the Adjudicator on page 2 of the Interim Decision issued on October 23, 2020:

*I have reviewed all documentary evidence and I find that the tenant's name on the Application for Dispute Resolution does not match the tenant's name on the tenancy agreement or the tenant's name on the 10 Day Notice.*

*I find this discrepancy in the tenant's name raises a question that can only be addressed in a participatory hearing.*

During the hearing, I explored the above described matter further. The building manager testified that in filing the Application for Dispute Resolution the owner used the tenant's first and middle name in naming the tenant. The building manager testified that she prepared the original tenancy agreement with the tenant and checked the tenant's identification in doing so; however, that copy of the tenancy agreement was given to the tenant and the tenant did not return it. As such, the landlord prepared a second copy of the tenancy agreement and asked the tenant to insert her name in the space provided. The tenant inserted her name; however, the ordering of her names is incorrect on the tenancy agreement. The building manager testified that the tenant ought to be identified on the name that appears on the 10 Day Notice.

Upon review of the tenant's signature on the signature page of the tenancy agreement; the 10 Day Notice to End Tenancy for Unpaid Rent dated September 4, 2020; and, the rent payment receipts issued by the property owner in November 2020 and December 2020 I find they are consistent with the building manager's submissions as to the correct first and last name of the tenant. Therefore, I amend the landlord's Application for Dispute Resolution accordingly.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to a Monetary Order, as amended?

Background and Evidence

The tenancy started on August 1 ,2020 and the landlord collected a security deposit of \$800.00. The tenant was required to pay rent of \$1600.00 on the second day of each month.

The tenant failed to pay rent that was due on September 2, 2020. The property owner issued a 10 Day Notice to End tenancy or Unpaid Rent ("10 Day Notice") on September 4, 2020 indicating rent of \$1600.00 was outstanding and an effective date of September 15, 2020. The 10 Day Notice was served by the building manager placing it in the tenant's mailbox in the presence of the other property owner, on September 4, 2020.

The landlord testified that after serving the 10 Day Notice the tenant delivered a cheque issued by an organization in the amount of \$510.00.

The landlord testified that the tenant did not pay any monies for October 2020 but the landlord did collect \$450.00 and \$450.00 in the months of November 2020 and December 2020 for which receipts were issued to the tenant for "occupancy only". No monies were received from or on behalf of the tenant in January 2021.

The landlords testified that the tenant continues to occupy the rental unit along with her boyfriend.

The landlords seek an Order of Possession and Monetary Order for the unpaid and loss of rent. The landlords did not make a claim against or request authorization to retain the security deposit.

As documentary evidence, the landlords provided a copy of the tenancy agreement; the 10 Day Notice; a signed Proof of Service for the 10 Day Notice; and, receipts issued for “occupancy only” in November 2020 and December 2020.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1600.00 every month and I was not presented any evidence to suggest the tenant had a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that a 10 Day Notice was placed in the tenant’s mailbox on September 4, 2020. Since the 10 Day Notice was placed in the mailbox, the tenant is deemed to have received it three days later on September 7, 2020, in the absence of evidence to the contrary, pursuant to section 90 of the Act. Accordingly, I find the tenant had until September 12, 2020 to either pay the outstanding rent or file to dispute the 10 Day Notice and the effective date of the 10 Day Notice changes to September 17, 2020 in accordance with section 53 of the Act.

I note the landlords incorreccted indicated on the 10 Day Notice that rent was outstanding as of September 1, 2020 as it should have read September 2, 2020 since the tenancy agreement provides that rent is payable on the second day of every month. However, since the 10 Day Notice was served after September 2, 2020 I am satisfied the rent was outstanding when the 10 Day Notice was served and the error is inconsequential especially considering the tenant did not appear for the hearing to raise any issue with the error.

The landlords collected \$510.00 toward the unpaid rent for September 2020, leaving an unpaid balance of \$1090.00. Since the tenant did not pay all of the outstanding rent or file to dispute the 10 Day Notice by September 12, 2020, I find the tenancy ended on September 17, 2020. Therefore, I find the landlords are entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, I find the landlords entitled to recover from the tenant the unpaid rent that was due for September 2020 in the amount of \$1090.00. Since the tenant did not vacate the rental unit, I further find the landlords entitled to recover from the tenant loss of rent incurred for the months of October 2020 through January 2021, less the two \$450.00 payments the landlords received.

I also award the landlords recovery of the \$100.00 filing fee paid for this application.

The landlords did not request authorization to retain the security deposit in partial satisfaction of the unpaid rent and it remains to be administered in accordance with section 38 of the Act.

In light of the above, the landlords are provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent for September 2020 (\$1600.00 - \$510.00)	\$1090.00
Loss of rent for October 2020 – January 2021 (\$1600.00 x 4)	6400.00
Less: two payments for “occupancy only” (\$450.00 x 2)	(900.00)
Filing fee	<u>100.00</u>
Monetary Order	\$6690.00

### Conclusion

The landlords are provided an Order of Possession effective two (2) days after service upon the tenant.

The landlords are provided a Monetary Order in the sum of \$6690.00 to serve and enforce upon the tenant.

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 12, 2021

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Residential Tenancy Branch