



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GARY HAMMOND LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Landlord's application: MNRL-S, FFL  
Tenant's application: CNR, FFT

### **Introduction**

This hearing dealt with an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 20, 2020 (10 Day Notice) and to recover the cost of the filing fee. The landlord applied for a monetary order for unpaid rent or utilities and to recover the cost of the filing fee.

The tenant and an agent for the landlord company, MG (agent) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed that they had received the application and documentary evidence from the other party. As a result, I find that both parties were sufficiently served in accordance with the Act.

### **Preliminary and Procedural Matters**

At the outset of the hearing, and by consent of the parties, the name of the landlord company was corrected in both applications and the agent was changed to an agent and not the landlord.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both

parties. Any orders will be emailed to the party receiving the order, and that party must then serve the other party with the order.

### Issues to be Decided

- Should the 10 Day Notice be cancelled?
- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is either party entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 15, 2018 and reverted to a month to month tenancy after May 31, 2019. The parties confirmed that monthly rent is currently \$1,383.00 per month plus \$15.00 per month for parking for a total of \$1,398.00 and is due on the first day of each month.

There are two issues before me, the 10 Day Notice and unpaid rent/parking fees.

Regarding the unpaid rent/parking fees, the tenant confirmed that they failed to pay June, July and August 2020 rent of \$1,398.00, and parking for September 2020, which totals \$4,209.00. As a result, a repayment plan was served on the tenant with 9 equal payments of \$467.67 being due on the 15<sup>th</sup> day of each month. The landlord testified that they provided the tenant an extra 2 weeks as a courtesy to the tenant. The repayment plan is dated September 14, 2020 and the first payment is not due until November 15, 2020.

The tenant claims that their repayment plan is not correct as it is not due on the first day of the month. As indicated above, the landlord stated that as a courtesy to the tenant, they made the repayment plan later in the month than the rent so not to inconvenience the tenant. The tenant testified that they have made no payments of the \$4,209.00 owing as they were waiting for the results of the hearing before making any payments.

The second issue is the 10 Day Notice. The tenant's position is that the 10 Day Notice is not valid as the landlord failed to sign the 10 Day Notice. The landlord confirmed that they did not submit a signed copy of the 10 Day Notice to the tenant or to the Residential Tenancy Branch (RTB) in evidence.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Firstly, I find the repayment plan to be valid and in full force and effect and that the landlord being gracious to delay the monthly payment of \$467.67 does not invalidate the repayment plan. As a result, I find the landlord has met the burden of proof and I grant the landlord **\$4,209.00** in unpaid rent as I find the tenant failed to comply with the repayment plan by making no payments as required in the repayment plan dated September 14, 2020. I note that once the tenant missed one payment, the entire amount becomes due and payable under the Act.

As the landlord's application was successful, I grant the landlord **\$100.00** for the cost of the filing fee pursuant to section 72 of the Act. As a result, the landlord is granted a monetary order for the total amount of **\$4,309.00** pursuant to section 67 of the Act.

Regarding the 10 Day Notice, while the tenant confirmed receiving the 10 Day Notice and has not paid any amount towards the repayment plan, the landlord did neglect to sign the 10 Day Notice. As a result, section 52 of the Act applies which states that for a notice to end tenancy to be effective, it must be signed and dated by the landlord giving the notice. As a result of the above, I cancel the 10 Day Notice due to the missing landlord signature. The landlord is at liberty to serve a new 10 Day Notice on the tenant.

As the tenant was only successful due to a technicality and failed to pay any rent related to the repayment plan, I do not grant the filing fee pursuant to section 72 of the Act.

### Conclusion

The landlord is granted a monetary order in the amount of \$4,309.00 which must be served on the tenant. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The 10 Day Notice is cancelled due to lack of landlord signature. The landlord is entitled to serve a new 10 Day Notice.

The decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 22, 2021

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Residential Tenancy Branch