



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Coldwell Banker Prestige Realty and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

MNRL-S, OPR-PP, FFL

### **Introduction**

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on December 03, 2020 (the "Application"). The Landlord sought the following:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- To recover unpaid rent;
- To keep the security deposit; and
- Reimbursement for the filing fee.

The Agent for the Landlord appeared at the hearing. The Tenant did not appear at the hearing. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Agent advised that the Tenant vacated the rental unit December 25, 2020 and confirmed the Landlord is no longer seeking an Order of Possession given this.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence. The Agent testified that the hearing package and evidence were served on the Tenant in person December 10, 2020 and confirmed the Tenant signed the statement in evidence acknowledging service.

Based on the undisputed testimony of the Agent and statement in evidence signed by the Tenant, I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(a) and 89(1)(a) of the *Residential Tenancy Act*

(the "*Act*"). I am also satisfied the Landlord complied with rule 3.1 of the Rules of Procedure in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started July 01, 2017 and was for a fixed term ending June 30, 2018. The tenancy then became a month-to-month tenancy. Rent was \$1,925.00 per month due on or before the first day of each month. The Tenant paid a \$962.50 security deposit. The agreement was signed by both parties.

As stated, the Agent testified that the Tenant vacated the rental unit December 25, 2020.

The Agent testified as follows. The Landlord is not seeking unpaid rent for December. The Landlord is seeking unpaid rent from April to November. The only rent paid for these months was \$1,950.00 in July and \$2,000.00 in October. The total rent owing is \$11,450.00. The Landlord is seeking to keep the security deposit towards this amount.

The Agent advised that the Tenant did not have authority under the *Act* to withhold rent.

The Landlord submitted a lease ledger, lease unpaid charges table, 10 Day Notice for November rent, repayment plan and written outlines of amounts owing.

### Analysis

Section 7(1) of the *Act* states that a party who does not comply with the *Act* or their tenancy agreement must compensate the other party for loss that results.

Section 26 of the *Act* states:

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.

I make the following findings based on the undisputed testimony of the Agent and documentary evidence submitted.

The Tenant was required to pay \$1,925.00 in rent per month on or before the first day of each month pursuant to the tenancy agreement.

The Tenant failed to pay rent from April to November, other than \$1,950.00 in July and \$2,000.00 in October.

The Tenant did not have authority under the *Act* to withhold rent.

Therefore, pursuant to sections 7 and 26 of the *Act*, the Tenant owes the Landlord \$11,450.00 in unpaid rent. The Landlord is entitled to recover this amount.

I acknowledge that the outstanding rent amount includes “affected rent” as that term is defined in the *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation*. I also acknowledge that “affected rent” is subject to a repayment plan if a landlord seeks to end a tenancy for unpaid “affected rent”. However, here, the tenancy has ended and therefore the Landlord is entitled to recover all outstanding rent.

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$11,550.00. The Landlord can keep the \$962.50 security deposit towards this amount pursuant to section 72(2) of the *Act*. The Landlord

is issued a Monetary Order for the remaining \$10,587.50 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$11,550.00. The Landlord can keep the security deposit. The Landlord is issued a Monetary Order for the remaining \$10,587.50. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 26, 2021

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Residential Tenancy Branch