



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNRL-S, OPR-PP, FFL**

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$1,000 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:11 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord's property manager ("**KF**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that KF and I were the only ones who had called into this teleconference.

KF testified she served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on November 25, 2020. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on November 30, 2020, five days after the landlord mailed it, in accordance with sections 88, 89, and 90 of the Act.

### **Preliminary Issue – Amendment to Increase Amount Claimed**

At the hearing, the landlord sought to further amend the application to include a claim for additional rent arrears accrued after the notice to end tenancy for non-payment of rent (the "**Notice**") was issued on September 17, 2020 (in the amount of \$1,040 for the period of October 1, 2020 to February 1, 2021), as well as all arrears that are payable pursuant to payment plan issued pursuant to the *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act)* (No. 2) Regulation (in the amount of \$2,200).

Rule of Procedure 4.2 states:

#### **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.

In this case, the landlord is seeking compensation for unpaid rent that has increased since the Notice was issued as well as unpaid rent that was subject to repayment pursuant to a payment plan authorized by the *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act)* (No. 2) Regulation.

The increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for these amounts (\$3,240).

#### **Preliminary Issue – Amendment of Tenant's Name**

At the outset of the hearing, I noted that the tenant's names listed on the application and Notice (FMH) are in a different order from her names recorded on the tenancy agreement (MHF). On the tenancy agreement, her last name is recorded as "HF". On the application and Notice, her last name is listed as "H".

At the hearing, KF indicated that the correct order of the tenant's names is "MHF". Pursuant to Rule 4.2, I amend the application to reflect this.

Section 68 of the Act states:

#### **Director's orders: notice to end tenancy**

**68** (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

I find that the tenant, upon receipt of the Notice, would have reasonably known that it was intended to name her as the tenant. In the circumstances, I find that it is reasonable to amend the Notice to correct the order of the tenant's names.

As such, I order that the tenant's name on the application and the Notice be amended so that the order of her names is changed from FMH to MHF (correct order written in full on the cover of this decision).

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$4,240;
- 3) recover the filing fee; and
- 4) retain the security deposit in partial satisfaction of the monetary orders made?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the KF, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting February 1, 2020. Monthly rent is \$1,000 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$500 which the landlord still holds in trust for the tenant.

KF testified that the tenant started to fall into arrears in April 2020. She provided a ledger showing the tenant's payment history as of November 17, 2020. She provided testimony as to the tenant's payment history since that date. The tenant's payment history since April 1, 2020 is as follows:

Date	Owed	Paid	Balance
01-Apr-20	\$1,000		\$1,000
01-May-20	\$1,000		\$2,000
01-May-20		\$1,000	\$1,000
01-May-20		\$700	\$300
01-Jun-20	\$1,000		\$1,300
01-Jun-20		\$300	\$1,000
22-Jun-20		\$500	\$500
01-Jul-20	\$1,000		\$1,500
02-Jul-20		\$300	\$1,200
01-Aug-20	\$1,000		\$2,200
01-Sep-20	\$1,000		\$3,200
01-Oct-20	\$1,000		\$4,200
09-Oct-20		\$650	\$3,550
14-Oct-20		\$100	\$3,450

16-Oct-20		\$250	\$3,200
23-Oct-20		\$500	\$2,700
01-Nov-20	\$1,000		\$3,700
01-Dec-20	\$1,000		\$4,700
04-Dec-20		\$600	\$4,100
17-Dec-20		\$900	\$3,200
01-Jan-21	\$1,000		\$4,200
22-Jan-21		\$960	\$3,240
01-Feb-21	\$1,000		\$4,240

In total, the tenant is \$4,240 in arrears. KF testified that the landlord served the tenant with a payment plan for repayment of arrears from April 1, 2020 to August 1, 2020 (\$2,200) on October 20, 2020. She testified that the tenant has not made any payments pursuant to this payment plan.

On September 17, 2020, KF served the tenant with the Notice by posting it on the door of the rental unit. It specified an effective date of October 1, 2020 and stated that the tenant was \$1,000 in arrears as of September 1, 2020 (the other arrears were repayable pursuant to the repayment plan, and therefore not referenced on the Notice).

KF testified that the tenant did not pay the arrears listed on the Notice or apply to dispute the Notice within five days of it being served.

### **Analysis**

Based on the testimony of KF and the tenancy agreement entered into evidence, I find that monthly rent for the rental unit is \$1,000. I find that, since April 1, 2020, the tenant has made payments as set out above.

I accept KF's testimony that she served the tenant with the Notice on September 17, 2020.

Section 46 of the Act states:

#### **Landlord's notice: non-payment of rent**

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) 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
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I find that the tenant neither paid the arrears claimed on the Notice nor disputed the Notice within five days of receiving the Notice, or at all.

I find that the Notice meets the form and content requirements of section 52 of the Act.

As such, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (October 1, 2020). The landlord is entitled to an order of possession effective five days from service on the tenant.

I find that the tenant is currently \$4,240 in rental arrears (including the amount repayable pursuant to the payment plan). I find that the tenant has not made any payments pursuant to the payment plan and is therefore in breach of it. Accordingly, and as the tenancy has now been terminated, the full amount of arrears payable under the repayment plan is now due.

I order that the tenant repay the landlord \$4,240, representing rental arrears accrued between April 1, 2020 and February 1, 2021.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

### **Conclusion**

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$3,840, representing the following:

Description	Amount
Rental Arrears	\$4,240
Filing Fee	\$100
Security Deposit Credit	-\$500
<b>Total</b>	<b>\$3,840</b>

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within five days of being served with a copy of this decision and attached order(s) by the landlord.

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: February 8, 2021