



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

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CNR, OLC

OPR, OPC, MNDL-S. FFL

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### Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant filed claims for:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated April 1, 2021 ("10 Day Notice"); and
- an Order for the Landlord to Comply with the Act or tenancy agreement.

The Landlord filed claims for:

- an Order of Possession for unpaid rent, further to having served the Tenant with the 10 Day Notice;
- an Order of Possession for Cause, further to having served the Tenant with a One Month Notice to End Tenancy for Cause;
- a Monetary Order for unpaid rent and laundry fees of \$1,620.00 from the Tenant, retaining the security deposit to apply to these claims; and
- recovery of her \$100.00 Application filing fee.

An agent for the Landlord, D.D., (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes

provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about it. During the hearing, the Agent had the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Landlord’s Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that the Landlord served the Tenant with the Notice of Hearing documents by posting them on the door of the rental unit, “...much more than 14 days before the hearing – months ago,” he said. I note that the Landlord applied for dispute resolution on April 28, 2021, and that the last evidence to be submitted to the RTB was done on May 5, 2021. Based on the testimony and other evidence before me on this matter, I find it more likely than not that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Landlord’s Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

The Tenant was provided with a copy of his Notice of a Dispute Resolution Hearing by the RTB on April 13, 2021; however, the Tenant did not attend the teleconference hearing. The only person to call into the hearing was the Respondent Landlord’s Agent, who indicated that he was ready to proceed.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time, unless otherwise set by the arbitrator. The Landlord’s Agent and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on July 27, 2021, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for 18 minutes; however, neither the Tenant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to

Rule 7.3 and section 62 of the Act, I **dismiss the Tenant's Application without leave to reapply.**

The Agent said that the Tenant moved out of the rental unit by April 30, 2021, and that the Landlord now has new tenants occupying the rental unit. As such, the Agent confirmed that the Landlord no longer needs an order of possession, and that she simply seeks recovery of unpaid rent, laundry fees, and the application filing fee of this proceeding.

#### Preliminary and Procedural Matters

The Parties provided their email addresses in their applications and the Agent confirmed the Landlord's address in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that he is not allowed to record the hearing and that if he was recording it, he was required to stop immediately. The Agent confirmed that he was not recording the hearing.

#### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

#### Background and Evidence

The tenancy agreement states, and the Agent confirmed that the periodic tenancy began on May 1, 2020, with a monthly rent of \$1,200.00, due on the first day of each month. The Agent confirmed that the Tenant paid the Landlord a security deposit of \$600.00, and no pet damage deposit. The Agent said that the Landlord still holds the security deposit to apply to this Application.

The Landlord submitted a copy of a 10 Day Notice that was signed and dated April 1, 2021, which has the rental unit address, and which was served to the Tenant by attaching a copy of it to the rental unit door. The grounds noted on the 10 Day Notice for the eviction were that the Tenant failed to pay the Landlord \$1,200.00 in rent when it was due on April 1, 2020. The Landlord also noted on the 10 Day Notice that the Tenant owed her a portion of March 2021 rent, as well.

In the hearing, the Agent said:

We kept the security deposit, because [the Landlord] had to do the cleaning. And he did not pay his rent in full in April or March – on March 6<sup>th</sup> he paid \$300.00, and on March 14<sup>th</sup>, he paid \$520.00, so he owes \$380.00 for March.

\$1200.00 is owing for April. And then there's \$140.00 more - \$100.00 for the filing fee and \$20.00 for March and \$20.00 for April to use the laundry. He participated – he used it - but he didn't pay anything. We don't make a penny, because we use that money for supplies and laundry maintenance.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 (1) of the Act outlines the grounds on which a landlord may issue a 10 Day eviction notice for non-payment of rent:

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

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from 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.

...

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on April 4, 2021, three days after it was served to him by posting it on the rental unit door.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Agent said that the Landlord was owed \$1,580.00 in unpaid rent as of April 1, 2020, in addition to \$40.00 for using the laundry, as well as the \$100.00 Application filing fee, for a total monetary claim of \$1,720.00.

Based on the above, I find that the amount of outstanding rent listed on the 10 Day Notice of \$1,200.00 is incorrect, as it was based on outstanding rent amount due for April 1, 2021; it did not include the \$380.00 of unpaid rent from March 2021 that was outstanding on April 1, 2021. However, the Landlord was clear in her application that she seeks \$1,580.00 in rent arrears, as well as \$40.00 for laundry use, and recovery of the \$100.00 application filing fee.

The 10 Day Notice was signed, dated, had the rental unit address and the effective vacancy date of April 11, 2019. I find that the effective date is incorrect, as it should have been 10 days after the 10 Day Notice was deemed served on the Tenant. As noted above, the 10 Day Notice was deemed served on the Tenant on April 4, 2021, pursuant to section 90. Therefore, pursuant to section 53 of the Act, the vacancy effective date is automatically corrected to April 14, 2021. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to explain why he had not paid the rent in full in March and April 2021, nor why he did not pay the \$40.00 in laundry fees owing to the Landlord. Further, the Tenant's application to cancel the 10 Day Notice and for an order for the Landlord to comply with the Act are irrelevant, since the Tenant moved out in April 2021. Accordingly, and pursuant to section 62 of the Act, I dismiss the Tenant's application without leave to reapply.

Based on the evidence before me overall, I find that the Landlord is eligible for a monetary award for unpaid rent of \$1,580.00 that was due on April 1, 2021, pursuant to sections 26 and 67 of the Act. And pursuant to section 67, I also award the Landlord with \$40.00 from the Tenant for laundry usage that was unpaid, according to the undisputed evidence before me, and. Given her success, I also award the Landlord with recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$600.00 security deposit in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain the Tenant's \$600.00 security

deposit for this purpose. I, therefore, grant the Landlord a Monetary Order of **\$1,120.00** from the Tenant for the remaining amount of the monetary awards owing.

### Conclusion

The Tenant did not attend the hearing to present the merits of his application for dispute resolution. This was in part, because he moved out of the rental unit and his claims are no longer relevant. As such, his application is dismissed without leave to reapply.

The Landlord was successful in her application for unpaid rent of \$1,520.00, and unpaid laundry fees of \$40.00, as the Landlord presented undisputed evidence to establish these claims on a balance of probabilities. Further, the Landlord is awarded recovery of the \$100.00 application filing fee from the Tenant, for a total award of **\$1,720.00**.

The Landlord is authorized to retain the Tenant's \$600.00 security deposit in partial satisfaction of this award. The Landlord is granted **\$1,120.00** from the Tenant in complete satisfaction of the monetary awards. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: July 28, 2021

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Residential Tenancy Branch