



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR-MT, OLC, LRE, FFT

### Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:18 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord 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 the landlord and I were the only ones who had called into this teleconference.

The landlord testified that she was served with the tenant's application for dispute resolution and evidence via registered mail but could not recall on what date. I find that the landlord was served with the above documents in accordance with section 89 of the *Act*.

The landlord testified that the tenant vacated the subject rental property on November 3, 2021.

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. 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 re-apply.

Based on the above, in the absence of any evidence or submissions from the applicant I order the application dismissed without liberty to reapply.

The landlord confirmed her email address for service of this decision and order.

I note that section 55(1.1) of the *Act* requires that when a tenant submits an application for dispute resolution (the “application”) seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to a monetary order if the application is dismissed or the landlord’s notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

As the tenant has already moved out, I do not need to consider if the landlord is entitled to an Order of Possession under section 55 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for Unpaid rent pursuant to section 55 (1.1) of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord’s submissions and arguments are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on December 1, 2020 and ended on November 3, 2021. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month.

The landlord testified that the tenant only paid \$498.00 towards July 2021's rent and has not paid any rent for August, September, October, or November 2021. The landlord testified that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on August 4, 2021 (the "Notice") by registered mail, by slipping a copy under the tenant's door and by leaving a copy in the tenant's mailbox. The tenant made this application to cancel the Notice on August 6, 2021. The landlord testified that the tenant made no rent payments after receiving the Notice and has avoided the landlord's attempts at contact.

The Notice was entered into evidence by the tenant. The Notice has a date format of DD/MM/YY. The landlord wrote the date 8/04/2021 which reads April 8, 2021. The landlord testified that she meant to write 04/08/2021 which reads August 4, 2021. The Notices states that the tenant must move out by August 10, 2021.

### Analysis

I find, on a balance of probabilities, that the tenant received the Notice by August 6, 2021 because the tenant filed to cancel the Notice on that day. I find that that the tenant was sufficiently served for the purpose of this *Act* with the Notice, in accordance with section 71 of the *Act*.

I find that the tenant knew or ought to have known that the date the Notice was signed was August 4, 2021, not April 8, 2021. I find that this was an obvious typo and that it is reasonable to amend the Notice. I amend the Notice to be dated August 4, 2021 pursuant to section 68(1) of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46 is August 16, 2021. I find that the corrected effective date of the Notice is August 16, 2021.

Section 55(1) and section 55(1.1) of the *Act* state:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a)the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b)the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1)If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Upon review of the amended Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Residential Tenancy Guideline #3 states

Under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA), the director must grant a landlord an order requiring the tenant to pay the unpaid rent if the following conditions are met:

- the tenant has disputed a notice to end tenancy issued by the landlord for unpaid rent under section 46 of the RTA (section 39 of the MHPTA);
- the notice to end tenancy complies with section 52 of the RTA (section 45 of the MHPTA); and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

This provision allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Under the legislation, the requirement to pay rent flows from the tenancy agreement. Unpaid rent is money that is due and owing during the tenancy.

Compensation for overholding under section 57 of the RTA (section 50 of the MHPTA) is not considered rent since overholding only occurs after a tenancy has ended. Compensation due to a loss of rent resulting from the tenant ending the tenancy early or by leaving the rental unit or manufactured home site in an unrentable condition is also not considered unpaid rent. The loss arises after and because of the tenancy ending. If a landlord is seeking such compensation, they

must make a separate application for dispute resolution and give proper notice to the tenant in accordance with the provisions of the legislation. The director cannot make an order for this type of compensation under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA).

To determine whether an amount owing is for unpaid rent and must be ordered at the hearing, the director must make a finding about when the tenancy ends or ended.

If the tenant has vacated or abandoned the rental unit prior to the date of the dispute resolution hearing, the date the tenancy ended is the date that the tenant vacated or abandoned the rental unit. Only rent owing up until this date would constitute unpaid rent for the purpose of section 55(1.1) of the RTA (section 48(1.1) of the MHPTA).

Since the tenant vacated the subject rental property prior to this hearing, I find that the date the tenant vacated the unit, November 3, 2021, is the date the tenancy ended.

Since I have dismissed the tenant's application and have found that the Notice meets the form and content requirements of section 52 of the *Act*, I find that pursuant to section 55(1.1) of the *Act* the landlord is entitled to a monetary order for unpaid rent.

I accept the landlord's undisputed testimony that the tenant only paid \$498.00 towards July 2021's rent and has made no rent payments from August to November 2021.

I award the landlord a Monetary Order for unpaid rent as follows:

July 2021: \$1,502.00

August 2021: \$2,000.00

September 2021: \$2,000.00

October 2021: \$2,000.00

November 1-3 on a per diem basis:  $\$2,000.00 \text{ (rent)} / 30 \text{ (days in November)} = \$66.67 \text{ (daily rate)} * 3 \text{ (day of tenancy in November)} = \$200.01$

### Conclusion

The tenant's application is dismissed without leave to reapply.

Pursuant to section 55 (1.1) of the *Act*, I issue a Monetary Order to the landlord in the amount of \$7,702.01.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: December 10, 2021

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Residential Tenancy Branch