



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR-DR, MNR-DR, FFL, MNDCL, MNDL
Tenant: LRE, DRI, CNR

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70; and
- disputation of a rent increase pursuant to section 43.

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

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

- a Monetary Order for damage or compensation, pursuant to section 67; and
- a Monetary Order for damage, pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:47 p.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 was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that she was not recording this dispute resolution hearing.

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

The landlord testified that she served the tenant with her application for dispute resolution, amendment and evidence via registered mail on August 25, 2021. A Canada Post registered mail receipt dated August 25, 2021 was entered into evidence. I find that the above documents were served on the tenant in accordance with section 88 and 89 of the *Act*. I find that the tenant was deemed served with the above documents on August 30, 2021 in accordance with section 90 of the *Act*.

At the start of the hearing the landlord testified that the tenant moved out on or around November 21, 2021. At the start of the hearing the landlord withdrew her amendment and testified that at this time she is only seeking a Monetary Order for unpaid rent. As this tenancy had already ended, I dismiss the landlord's application for an Order of Possession without leave to reapply. As the landlord has withdrawn her amendment, I dismiss the landlord's claim for:

- a Monetary Order for damage or compensation, pursuant to section 67; and
- a Monetary Order for damage, pursuant to section 67

with leave to reapply.

I make no findings on the merits of the amendment. Liberty to reapply is not an extension of any applicable limitation period.

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 tenant, I order the tenant's application dismissed without leave to reapply.



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Issue to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to authorization to recover the filing fee for this application from the tenant, pursuant to section 72 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 October 1, 2014 and ended on or around September 21, 2021. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. This tenancy was a month-to-month tenancy. The tenant did not provide a forwarding address.

The landlord testified that the tenant did not pay rent on August 1, 2021 when it was due. The landlord testified that the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent on August 2, 2021 (the "10 Day Notice"). The landlord entered into evidence a witnessed proof of service document and signed hand delivery receipt stating same.

The 10 Day Notice states that the tenant failed to pay rent in the amount of \$1,600.00 that was due on August 1, 2021. The tenant filed to cancel the 10 Day Notice on August 9, 2021.

The landlord testified that the tenant did not pay any rent for August 2021 and texted her on September 10, 2021 to inform her that he would move out on September 20, 2021. The landlord testified that she attended at the subject rental property on

September 21, 2021 and found that the tenant had vacated the subject rental property but had left it a mess and had not returned the keys.

The landlord testified that the tenant did not pay any rent for September 2021. The landlord testified that she is seeking rent for August, September and October 2021. The landlord testified that the tenant did not provide a full one month's notice to end tenancy, so the tenant was obligated to pay October 2021's rent.

Analysis

I accept the landlord's undisputed testimony that the tenant did not pay any rent for August, September or October of 2021. I accept the landlord's undisputed testimony that the tenant gave notice to end tenancy via text message on September 10, 2021 effective September 20, 2021.

Section 26(1) 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 this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,600.00 on the first day of each month. Based on the undisputed testimony of the landlord and the 10 Day Notice entered into evidence, which I find was served on the tenant in accordance with section 88 of the *Act*, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$3,200.00 for August and September 2021's rent.

Section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the date before the day in the month that rent is payable under the tenancy agreement.

This issue is expanded upon in Policy Guideline #5 which explains that, where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

In this case, contrary to section 45 of the *Act*, less than one month's notice was provided to the landlord to end the tenancy. Pursuant to Policy Guideline #5, the

landlord was not required to rent the rental unit for the earlier date and is entitled to rent up until the date the tenant could legally have ended the tenancy. I find that the earliest date the tenant could have ended the tenancy, pursuant to section 45 of the *Act*, for a notice to end tenancy given on September 10, 2021, was October 31, 2021. Therefore, the landlord is entitled to October 2021's rent from the tenant in the amount of \$1,600.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$550.00.

Conclusion

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

The landlord's application for an Order of Possession is dismissed without leave to reapply.

The landlord's application for

- a Monetary Order for damage or compensation, pursuant to section 67, and
 - a Monetary Order for damage, pursuant to section 67,
- are dismissed with leave to reapply.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
August rent	\$1,600.00
September rent	\$1,600.00
October rent	\$1,600.00
Filing fee	\$100.00
Less security deposit	-\$550.00
TOTAL	\$4,350.00

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 13, 2021

Residential Tenancy Branch