



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

This hearing dealt with the landlord's Application for Direct Request seeking an order of possession and a monetary order. The hearing was convened in an Interim Decision dated December 7, 2021, as the adjudicator determined that there were questions about the application that could not be adjudicated without the benefit of a participatory hearing.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on February 19, 2015, for a month to month tenancy beginning on March 1, 2015 for a monthly rent of \$500.00 due on the 1<sup>st</sup> of each month with a security deposit of \$250.00 and a pet damage deposit of \$100.00 paid.

The agreement included an addendum entitled "Non-Profit Senior Supportive Housing Addendum" which stipulated that the tenant agreed to purchase services from the landlord including approximately 1.5 hours of housekeeping per week; cleaning of bed linens and towels; one meal per day and 24-hour monitoring for personal security.

This addendum also states: "Section 3 of the Residential Tenancy agreement is amended by deleting the words: 'The rent for the rental unit is \$500.00 per month' and replacing with the words 'The rent for the rental unit is \$500.00 per month including the cost of support services'".

The landlord submitted into evidence a 10 Day Notice to End Tenancy for Unpaid Rent issued on October 14, 2021, with an effective vacancy date of October 31, 2021, citing the tenant had failed to pay rent in the amount of \$2,066.00.

The landlord submitted into evidence a copy of a document entitled "Household Statement", which is in essence a tenant ledger. In this document the charges, on a monthly basis, include Rent (\$500.00 until September 1, 2021, then increased to \$575.00); SSH (\$73.32 for support services); internet (\$45.00); and phone (\$30.00). The total amount owing on this ledger for the date the landlord issued the Notice to End Tenancy was \$2,066.00

### Analysis

Section 46 allows 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. However, 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.

In addition, within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution.

The section goes on to say that if a tenant who has received a notice under this section does not pay the rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates by that date.

While the tenant, in this case, did not dispute the Notice to End Tenancy and would normally be considered as conclusively presumed to have accepted the tenancy, the landlord still must establish that on the date the Notice was issued there was any rent owing.

As the landlord's Household statement includes charges in addition to rent as well as lump sum payments that had led to the total outstanding amount of \$2,066.00, I cannot determine if the amounts owing were for rent or for the support services; internet; or phone charges.

In addition, the addendum to the tenancy agreement indicates that the support services were included in the total amount of rent of \$500.00 so it is unclear why the tenant would have been paying an additional charge for those services. If the tenant should not have been paying those additional charges from the beginning of the tenancy when the tenancy agreement specifically included them in the rent amount there may be no outstanding rent at all.

As a result, I find the landlord has failed to establish that any rent was owed on the day the notice was issued. Therefore, I order the Notice to End Tenancy for Unpaid Rent issued on October 14, 2021, is of no force or effect and is hereby cancelled.

As to the landlord's monetary claim was specifically for unpaid rent and the total amounts sought include the additional charges, I dismiss the monetary portion of the landlord's application. However, I will grant the landlord leave to reapply for their monetary claim, which would require the landlord to clearly identify and include rent as well as other charges outlined in the Household Statement.

### Conclusion

Based on the above, I dismiss the landlord's request for an order of possession without leave to reapply.

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 03, 2022

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Residential Tenancy Branch