



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES  
INC and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, OPR, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 14, 2021 (the "Application"). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 09, 2020 (the "Notice")
- To recover unpaid rent
- To keep the security deposit
- To recover the filing fee

J.E. appeared at the hearing as agent for the Landlord. Nobody appeared at the hearing for the Tenant. I explained the hearing process to J.E. who did not have questions when asked. I told J.E. they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). J.E. provided affirmed testimony.

J.E. provided the correct rental unit address which is reflected on the front page of this decision.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

J.E. testified that the hearing package and Landlord's evidence were sent by registered mail to the rental unit on September 23, 2021. The Landlord submitted registered mail receipts with Tracking Number 001 on them. I looked Tracking Number 001 up on the Canada Post website which shows the package was delivered to the Tenant October 01, 2021.

Based on the undisputed testimony of J.E., registered mail receipts and Canada Post website information, I am satisfied the Tenant was served with the hearing package and Landlord's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post website information, I am satisfied the Tenant received the hearing package and Landlord's evidence October 01, 2021. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. J.E. was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of J.E. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started November 01, 2017 and is a month-to-month tenancy. Rent is due on or before the first day of each month. The Tenant paid a \$430.00 security deposit. The agreement is signed for the Landlord and by the Tenant.

J.E. testified that rent was \$881.00 per month starting November 01, 2019 and raised to \$894.00 per month January 01, 2022.

The Notice was submitted. The Notice was issued July 09, 2020 and has an effective date of July 22, 2020.

J.E. pointed to an agreement between the parties in evidence which states:

1. You acknowledge that your outstanding indebtedness to our client totals \$14,239.00 up to and including July 1, 2020 (the "Amount Owning");
2. You acknowledge that you have been served with the 10-Day Notice to End Tenancy for non-payment of rent of the Amount Owning;
3. You will pay the sum of \$1,500.00 each month until the Amount Owning is paid in full (the "Monthly Payment Amount");
4. The Monthly Payment Amount includes your regular monthly rental fees of \$881.00; and
5. Should you fail to make a payment under the terms of this payment agreement, you will immediately vacate without opposition and without further demand or notice.

The Tenant signed the above agreement.

J.E. acknowledged the Tenant has made at least 20 rent payments since being issued the Notice. J.E. submitted that the Tenant failed to meet the terms of the above agreement.

I told J.E. there are two issues with the Notice (1) it was issued at a time when there were rules around "affected rent" and landlords issuing 10 Day Notices and (2) the Notice was issued more than a year ago which raises the question of whether the tenancy has been re-instated. I heard J.E.'s submissions on these two points.

J.E. testified that they did not know notices to end tenancy expire.

J.E. testified that the Application was filed much later than the Notice was issued because the Tenant was making payments into 2021 pursuant to the agreement between the parties. J.E. also pointed out that the Application was filed in September of 2021.

J.E. testified that there was \$11,436.00 in outstanding rent owing as of the date of the hearing. J.E. testified that the Landlord is seeking the entire amount of rent outstanding. J.E. testified that they are not aware of the Tenant having any authority under the Act to withhold rent.

The Landlord submitted the following relevant documentary evidence:

- Use and Occupancy receipts for 24 payments made by the Tenant between January of 2020 and December of 2021

- Rent ledgers
- Notice of Rent Increase
- Proof of Service for the Notice

### Analysis

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant has failed to pay rent. The relevant portions of section 46 state:

- 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...
- (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.
- (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...

Policy Guideline 11 states:

#### D. WAIVER OF NOTICE AND NEW OR CONTINUED TENANCY

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue.

Intent may also be established by evidence as to:

- whether the landlord specifically informed the tenant that the money would be for use and occupancy only;
- whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and
- the conduct of the parties.

In relation to the Notice, I find the Landlord reinstated the tenancy by coming to the agreement with the Tenant outlined above and accepting approximately 20 rent payments over a period of a year and a half after the Notice was issued. The Landlord did not seek an Order of Possession based on the Notice until more than a year after the Notice was issued. Further, the agreement between the parties does not state that the Notice is valid, that the Landlord will seek an Order of Possession based on the Notice or that the tenancy will end pursuant to the Notice if the Tenant defaults on payments. I acknowledge that the Landlord issued “use and occupancy” receipts for the payments made by the Tenant; however, I do not find this sufficient to bar waiver of the Notice given the Tenant made approximately 20 further payments over a year and a half

after the Notice was issued and the Landlord did not seek to enforce the Notice for this period. In the circumstances, I find the tenancy was reinstated through the actions of the parties after the Notice was issued and I decline to uphold the Notice at this point, more than a year and a half after it was issued. The Notice is cancelled.

In relation to unpaid rent, I accept the undisputed testimony of J.E. that the Tenant owes \$11,436.00 in outstanding rent and note that this is supported by the rent ledger in evidence. I allow the Landlord to amend the Application to include the full amount outstanding pursuant to rule 4.2 of the Rules. I accept that the Tenant did not have authority under the *Act* to withhold rent and note that there is no evidence before me that the Tenant did. The Landlord is entitled to recover \$11,436.00 in outstanding rent.

Given the Landlord was partially successful in the Application, the Landlord is entitled to recover the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$11,536.00 and is issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

I decline to allow the Landlord to keep the security deposit because the tenancy is not ending pursuant to the Notice.

### Conclusion

The Notice is cancelled.

I decline to allow the Landlord to keep the security deposit.

The Landlord is entitled to \$11,536.00 and is issued a Monetary Order in this amount. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: February 02, 2022

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Residential Tenancy Branch