



# 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 was convened as a result of the Landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for:

- an order of possession for non-payment of rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent in the amount of \$3,300.00 pursuant to section 67;
- authorization to keep the Tenant's security and/or pet damage deposit(s) under section 38; and
- authorization to recover the Landlord's filing fee pursuant to section 72.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated December 16, 2021 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Landlord. As a result, this hearing was scheduled and came on for hearing on February 4, 2022 to consider the Landlord's application. Notices of the reconvened hearing were enclosed with the Interim Decision. The Landlord was instructed to serve the notice of reconvened hearing, the Interim Decision and all other required documents, upon the Tenant within three days of receiving the Interim Decision, in accordance with section 89 of the Act.

The Tenant did not attend this hearing scheduled for 1:30 pm. I left the teleconference hearing connection open for the entire hearing, which ended at 1:43 pm, in order to enable the Tenant to call into this teleconference hearing. The Landlord's agent ("DR") 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 DR and I were the only ones who had called into this teleconference.

DR testified the Notice of Dispute Resolution Proceeding and some of his evidence (“NDRP Package”) was served on the Tenant by registered mail on December 21, 2021. The DR submitted Proof of Service on Form RTB-34 and the Canada Post tracking number to corroborate his testimony the NDRP Package was served on the Tenant. I find the NDRP Package was served on the Tenant in accordance with sections 88 and 89 of the Act. I find that, pursuant to section 90, the Tenant was deemed to have been served with the NDRP Package on December 26, 2021.

DR testified the Tenant did not serve any evidence on the Landlord.

### **Preliminary Issue – Amendment of Applicant’s Name**

DR testified the original applicant (“AP”) was the previous property manager of the rental unit. DR stated he was the new property manager of the rental unit. DR stated the owner of the rental unit is a corporation (“WM”). DR requested an amendment to the application to remove AP and add WM as the applicant.

Rule of Procedure 4.2 states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, DR is seeking to have the real owner of the rental unit added as the applicant and to remove the former property manager, AP, as the applicant. I find the request to have the property owner added as the applicant and remove the former property manager of the property should have been reasonably anticipated by the Tenant. Therefore, pursuant to Rule 4.2, I order the Landlord’s application be amended to remove AP as the applicant and add WM as the applicant.

### Issues to be Decided

Is the Landlord entitled to:

- an order of possession?
- a monetary order for \$3,300.00?
- retain the security deposit in partial satisfaction of the monetary orders made?
- recover the filing fee for the Landlord's application?

### Background and Evidence

While I have considered the documentary evidence and the testimony of DR, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the Landlord's claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting May 1, 2020 for a fixed term ending July 1, 2021. Monthly rent is \$1,100.00 and is payable on the first day of each month. The Tenant paid the Landlord a security deposit of \$550.00 which DR confirmed the Landlord still holds in trust for the Tenant.

DR testified the Tenant is in arrears as follows:

| Date         | Owed              | Paid          | Balance           |
|--------------|-------------------|---------------|-------------------|
| 01-Jul-21    | \$1,100.00        |               | \$1,100.00        |
| 01-Aug-21    | \$1,100.00        |               | \$2,200.00        |
| 01-Sep-21    | \$1,100.00        |               | \$3,300.00        |
| <b>Total</b> | <b>\$3,300.00</b> | <b>\$0.00</b> | <b>\$3,300.00</b> |

### Analysis

Sections 26 of the Act state:

- 26 (1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the undisputed testimony of DR, I find that monthly rent is \$1,100.00 and is due on the first of the month. I also accept DR's undisputed testimony the Tenant did not pay any rent for the months of July to September. I find that the Tenant has total rental arrears of \$3,300.00 for the Months of July, August and September 2021. Based on the above, I find the 10 Day Notice was issued for a valid reason. The Tenant must compensate the Landlord this amount.

Subsections 46(1), 46(2), 46(4) and 46(5) of the Act 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 *[form and content of notice to end tenancy]*.
- (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.*

[emphasis in italics added]

DR testified the 10 Day Notice was served on the Tenant's door on September 8, 2021, in accordance with section 88 of the Act. Pursuant to section 90 of the Act, the Tenant was deemed to have received the 10 Day Notice on September 11, 2021. Pursuant to section 46(4) of the Act, the Tenant had 5 days, or September 16, 2021, within which to make an application for dispute resolution to dispute the 10 Day Notice. DR stated he

was unaware of the Tenant making an application for dispute resolution to dispute the 10 Day Notice.

Subsections 55(2) and 55(4) of the Act state:

- 55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
- (a) a notice to end the tenancy has been given by the tenant;
  - (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
  - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
  - (c.1) the tenancy agreement is a sublease agreement;
  - (d) the landlord and tenant have agreed in writing that the tenancy is ended.
- (4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,
- (a) grant an order of possession, and
  - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. The Tenant has not made an application to dispute the 10 Day Notice. Accordingly, pursuant to section 55(4)(a) of the Act, I order the Tenant provide the Landlord with vacant possession of the rental unit. Pursuant to section 55(4)(b), I order the Tenant to pay the Landlord \$3,300.00 for the rental arrears.

As the Landlord was successful in its application, I order the Tenant to pay \$100.00 to reimburse the Landlord for its filing fee of the application.

Pursuant to section 72(2) of the Act, the Landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to section 67 of the Act, I order that the Tenant pay the Landlord \$2,850.00, representing the following:

| Description             | Amount            |
|-------------------------|-------------------|
| Rental Arrears          | \$3,300.00        |
| Security Deposit Credit | -\$550.00         |
| Landlord's filing fee   | \$100.00          |
| <b>Total</b>            | <b>\$2,850.00</b> |

Pursuant to section 55 of the Act, I order that the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached orders by the Landlord.

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 5, 2022

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Residential Tenancy Branch