



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Corrected DECISION**

### **Dispute Codes**

**OPL, FFL, MNDCL-S  
MNDCT, RP, RR, PSF, OLC, CNL-MT**

### **Introduction**

This hearing was convened in response to applications by the landlords and the tenant.

The landlord's application filed on December 2, 2021, and amended on January 11, 2022, is seeking orders as follows:

- An order of possession based on an undisputed notice to end tenancy;
- For a monetary order for unpaid rent;
- To keep all or part of the security deposit or pet damage deposit; and
- To recover the cost of the filing fee.

The tenant's application filed on December 20, 2021, is seeking orders as follows:

- For a monetary order for monetary loss or other money owed totalling \$31,500.00;
- To be allowed to reduce rent for repairs, services or facilities agreed upon but not provided;
- To have repairs made to the unit, sit or property;
- To have the landlord provide services or facilities required by law;
- To have the landlord comply with the Act; and
- To be allowed more time to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property, which was received on October 27, 2021.

Only the landlord and the landlord's legal counsel appeared. The tenant did not attend the hearing at any point during the hearing.

### Landlord's application

As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on December 10, 2021, a Canada post tracking number was provided as evidence of service. The Canada Post history show the tenant signed for the package on December 13, 2021. I find the tenant was served on December 13, 2021.

The landlord testified that they amended their application to include the unpaid occupancy rent and the amendment was sent by registered mail on January 26, 2022, a Canada post tracking number was provided as evidence of service. The Canada Post history show the tenant signed for the package on February 21, 2022. I find the tenant was served with the landlord's amended application.

### Tenant's application

This matter was set for hearing by telephone conference call at 11:00 A.M on this date. The line remained open while the phone system was monitored and the only participant who called into the hearing during this time was the Respondent and their legal counsel. Therefore, as the tenant did not attend the hearing to present any testimony or evidence and the landlord appeared and was ready to proceed, I dismiss the tenant's application **without leave to reapply**.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recover unpaid occupancy rent?

Is the landlord entitled to keep all or part of the security deposit and pet damage deposit?

### Background and Evidence

The tenancy began on October 1, 2020. Rent in the amount of \$2,100.00 was payable on the first of each month. A security deposit of \$1,050.00 and a pet damage deposit of \$1,050.00 were paid by the tenant (the "Deposits").

The landlord testified that the tenant was served with a Two Month Notice for Landlord's Use of Property, (the "Notice") issued on October 27, 2021, with the effective date of December 31, 2021. The tenant acknowledged in their application that they received the Notice on the same date.

The landlord testified that the tenant did not dispute the Notice within the statutory time limit. The landlord stated that they are unsure of the tenant's current status; however, there has been moving trucks attending. I note in an email the tenant sent to the landlord on March 6, 2022, stated that they would be moving on March 18, 2022.

The landlord testified that the tenant has failed to pay rent for December 2021, January, February and March 2022. The landlord stated that they are not asking for rent for December 2021, as that was rent the tenant was entitled to withhold as compensation for receiving the Notice.

The landlord testified that they seek to recover unpaid rent for January, February and March 2022, in the total amount of \$6,300.00. The landlord seeks to keep the Deposits to offset the amount owed.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the evidence of the landlord that the Notice was completed in accordance with Part 4 of the Act - How to End a Tenancy, pursuant to section 49 of the Act. A copy of the Notice was filed in evidence for my review and consideration.

I find the Notice was completed in the approved form and the contents meets the statutory requirements under section 52 the Act.

Further, I accept the evidence of the landlord that the tenant was served with the Notice in compliance with the service provisions under section 88 of the Act, which the tenant acknowledged service of the Notice in their application.

I am satisfied based on the landlord's evidence that the landlord has met the statutory requirements under the Act to end a tenancy.

Although the tenant did apply to dispute the Notice, it was filed late. The tenant did not attend the hearing to prove they had an exceptional circumstance that prevented them from making their application on time, such as being in the hospital. The tenant's application was dismissed. Further, the tenant may be vacated the premises as they have indicated in their emails that they would be vacating today, March 18, 2022.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

The tenant has received compensation for receiving the Notice as they withheld rent for December 2021.

The tenant has not paid any occupancy rent for January, February and March 2022. I find the tenant was required to pay the rent as they were overholding the premises. Therefore, I find the landlord is entitled to recover unpaid occupancy rent for the above said months in the total amount of **\$6,300.00**.

I find that the landlord has established a total monetary claim of **\$6,400.00** comprised of the above amount and to recover the filing fee from the tenant for this application. I order that the landlord retain the Deposits totalling \$2,100.00 to offset the amount owed. I grant the landlord a formal order for the balance due of ~~**\$3,300.00**~~ **\$4,300.00**. This Order may be filed in Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

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

The landlord is granted an order of possession, and a monetary order and may keep the Deposits is partial satisfaction of the claim.

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: March 18, 2022

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Residential Tenancy Branch

Corrected on March 24, 2022, by A. Wood, Arbitrator