



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI, LRE, FFT, OPR-DR, MNR-DR, FFL

### Introduction

This hearing dealt with cross-applications filed by the parties. On August 23, 2022, the Tenant made an Application for Dispute Resolution seeking to dispute a rent increase pursuant to Sections 41 to 43 of the *Residential Tenancy Act* (the “*Act*”), seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On September 1, 2022, the Landlords made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “*Notice*”) pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 9:30 AM on January 13, 2023.

The Tenant attended the hearing, with P.K. attending as an advocate for the Tenant. Landlords M.B. and K.S. attended the hearing as well. As the hearing progressed, it was determined that the Tenant was the only person that would meet the definition of a Tenant under the *Act*. As such, the other persons named as Applicants on the Tenant’s Application have been removed from the Style of Cause on the first page of this Decision.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of

the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

During the hearing, I advised the parties that as per Rule 2.3 of the Rules, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the parties that this hearing would primarily address the Landlords' 10 Day Notice to End Tenancy for Unpaid Rent, that the Tenant's claims would be dismissed, and that she is at liberty to apply for these under a new and separate Application.

It should be noted that all of the Tenant's submissions were made through P.K. The Tenant advised that she served the Notice of Hearing package by registered mail on or around September 9, 2022, and Landlord M.B. confirmed that they received this package. Based on this undisputed testimony, I am satisfied that this package was duly served.

The Tenant then advised that she did not serve her evidence, but then testified that she included a copy of an unsigned tenancy agreement in with the Notice of Hearing package. M.B. testified that they did not receive any documentary evidence from the Tenant. When the Tenant was questioned if she had any proof of serving her evidence, there was an exchange between her and P.K., and P.K. stated that there was no proof of service, but insisted that the tenancy agreement was served to the Landlord. M.B. advised that he could understand what language the Tenant and P.K. were engaging in, and that the Tenant actually disclosed that she never served any evidence.

While it is not clear what exactly the Tenant said to P.K., and what P.K. then elected to translate and testify to, I find it important to note that the Tenant did not have any proof that she served her evidence. As such, I am not satisfied that her documentary evidence was served. Consequently, I have excluded this evidence and will not consider it when rendering this Decision.

M.B. advised that the Landlords' Notice of Hearing and evidence package was served to the Tenant by posting it on the Tenant's door on October 21, 2022, and a proof of service document was submitted to corroborate service. The Tenant stated that she never received this package. However, I find it important to note that the doubts above surrounding the Tenant's testimony pertaining to service of her evidence caused me to question the legitimacy or truthfulness of the Tenant. Given that the Landlords had a signed proof of service document, I find it more likely than not that this package was served as claimed. As such, I am satisfied that this package was duly served to the Tenant. Furthermore, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Did the Landlords implement an illegal rent increase?
- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?
- Are the Landlords entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started as an unwritten, month-to-month tenancy agreement for the address listed on the first page of this Decision. The Landlords were cautioned that they were required under the *Act* to create a written tenancy agreement.

M.B. advised that the tenancy started on July 28, 2022, when the Tenant moved in after being provided with the key. He testified that rent was owed in the amount of \$2,500.00 per month and that it was due on the first day of each month. He claimed that no rent had ever been paid, but a security deposit of \$1,000.00 was paid by the Tenant via e-transfer on August 8, 2022. However, later in the hearing he contradictorily stated that this \$1,000.00 was actually for rent. As well, he also stated that the Tenant gave up vacant possession of the rental unit on or around November 4, 2022.

The Tenant advised that she received the keys on July 30 and moved in on July 31, 2022, that rent was \$2,500.00 per month, and that it was due between the 1<sup>st</sup> and the 5<sup>th</sup> of the month. However, later in the hearing, she contradictorily claimed that rent was \$1,000.00 per month for only a portion of the dispute address. She confirmed that she paid a security deposit of \$1,000.00 by e-transfer on August 8, 2022. Later in the hearing, the Tenant claimed that she gave up vacant possession of the rental unit on or around November 18, 2022.

All parties agreed that the Notice was served to the Tenant by being posted to the Tenant's door on August 23, 2022. The Tenant acknowledged that she received it; however, she clearly did not specifically dispute the Notice as part of her Application on August 23, 2022.

The Notice indicated that \$3,000.00 was owing for rent on August 1, 2022. As well, the effective end date of the tenancy was noted as September 2, 2022, on the Notice.

M.B. initially testified that the Tenant did not pay any rent at any point during the tenancy, and that the only payment was for the \$1,000.00 security deposit. As such, the Notice was served. However, as noted above, he later contradictorily claimed that this was actually for rent and not a security deposit. Moreover, given his testimony that rent was agreed upon at \$2,500.00 per month, he could not provide any explanation, that accorded with the *Act*, for why they noted on the Notice that rent was owing in the amount of \$3,000.00.

The Tenant claimed, through P.K., to have borrowed \$2,000.00 from a friend and paid this in cash to Landlord K.S. at his place of employment on July 30, 2022. While she testified that this friend witnessed this exchange of monies, she did not have any documentary evidence to prove that this payment was made.

Both M.B. and K.S. denied that the Tenant ever made this payment. As well, M.B. advised that P.K. was not truthful in her translation of the Tenant's testimony. He submitted that the Tenant actually claimed that "someone" gave her this money and that the Tenant never mentioned that this person witnessed any exchange of monies between the Tenant and K.S.

The Tenant advised, through P.K., that apart from the \$2,000.00 that she allegedly paid to K.S., she did not pay any rent to the Landlords. As well, she acknowledged that she did not have any authority under the *Act* to withhold the rent, and she did not have any explanation for why she did not pay any rent after August 2022. Although, as noted above, she did later claim that her rent was only \$1,000.00 and that she was not renting the entire dispute address.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have

accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. When reviewing the Notice, I am satisfied that this was a valid Notice.

The undisputed evidence before me is that the Notice was posted to the Tenant's door on August 23, 2022. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"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 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."*

As the Notice was deemed to have been received on August 26, 2022, the Tenant must have paid the rent in full or disputed the Notice by August 31, 2022, at the latest.

However, the undisputed evidence is that the Tenant did not pay any rent amount that she believed was owing in an attempt to cancel the Notice. Moreover, while the Tenant did file a dispute, she did not specifically dispute this Notice. The Tenant was informed of the following reasons for why she might be permitted to withhold the rent:

1. The Tenant has an Arbitrator's Decision allowing the deduction.
2. The Landlords illegally increased the rent.
3. The Landlords have overcharged for a security or pet damage deposit.
4. The Landlords refused the Tenant's written request for reimbursement of emergency repairs.
5. The Tenant had the Landlords' written permission allowing a rent reduction.

After being informed of these specific scenarios which would permit the Tenant to withhold the rent, she confirmed that none of these applied and that she did not have a valid reason under the *Act* for withholding the rent. As well, she acknowledged that she has not paid any rent since service of the Notice. Given that I am not satisfied that the Tenant paid \$2,000.00 to the Landlords, I find that the Tenant breached the *Act* and jeopardized her tenancy.

Even though the amount of rent owing on the Landlords' Notice seems to be incorrect, as the Tenant has not appeared to pay any rent after the Notice was served, I find that the Notice is valid. As I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, as the Tenant did not specifically dispute the Notice, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of

the *Act*. However, as the Tenant has given up vacant possession of the rental unit already, granting an Order of Possession is a moot point.

Moreover, given that the tenancy has already ended, addressing any of the issues in the Tenant's Application are also a moot point. As such, the Tenant's Application is dismissed without leave to reapply.

Regarding the Landlords' claims for monetary compensation for unpaid rent, I find it important to note that the Landlords served the Notice of Hearing package to the Tenant by posting it to her door. This method of service is not appropriate for the consideration of a Monetary Order, as per Section 89 of the *Act*. Furthermore, it is clear that there are some details of the tenancy that are in dispute as the Landlords did not create a written tenancy agreement with the Tenant. As it is not entirely evident how much rent is, or if any rent has even been paid, the Landlords will not be granted a Monetary Order for any rental arrears. The Landlords are at liberty to make a separate Application to seek remedy for any rental arrears that they believe are outstanding.

As a final note, I find it important to highlight that when conducting this hearing, it was clear that a significant reason that this tenancy was not successful was because the Landlords did not create a written tenancy agreement with the Tenant at the outset. Terms of the tenancy were not established, and there was either confusion or there were constantly evolving variations on what the terms of the tenancy were supposed to be. Of course, there was no documentation to establish what the changing terms of the tenancy were to be.

I also find it important to note that when hearing submissions from the parties, I did not find any of the parties to be particularly credible. Furthermore, there was little provided by any of the parties attending that would persuade me that any of the testimony given was either truthful or reliable.

As the Tenant's Application was dismissed, I find that the Tenant is not entitled to recover the \$100.00 filing fee.

As the Landlords did not establish a tenancy agreement in writing as required by the *Act*, which resulted in the unsuccessful outcome of this tenancy, I find that the Landlords are not entitled to recover the \$100.00 filing fee.

### Conclusion

The Tenant's Application for Dispute Resolution is dismissed without leave to reapply.

Based on the above, as the Tenant has already given up vacant possession of the rental unit, an Order of Possession is not necessary to be granted. Furthermore, the

Landlords claims for a Monetary Order for compensation are dismissed with 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: January 13, 2023

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Residential Tenancy Branch