



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenant: CNR-MT, MNDCT, OLC, FFT  
For the landlord: OPR-DR, MNR-DR, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenant's application pursuant to the Act is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee, under section 72.

The landlord's application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee, under section 72.

I left the teleconference connection open until 11:14 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. Landlord CG (the landlord) 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 landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00.”

#### Preliminary Issue – Correction of the Landlord’s Name

At the outset of the hearing the landlord corrected his first name and affirmed that he is also known as MG.

Pursuant to section 64(3)(a) of the Act, I have amended the landlord’s application.

#### Preliminary Issue – Service

The landlord registered mailed the notice of hearing and the evidence (the landlord’s materials) to the tenant’s rental unit address on October 06, 2022. The tracking number is recorded on the cover page of this decision.

The landlord confirmed receipt of the tenant’s notice of hearing (the tenant’s materials) and that he had enough time to review it.

Based on the landlord’s uncontested testimony and the tracking number, I find the landlord served the landlord’s materials in accordance with section 89(2)(b) of the Act. I find the tenant served the tenant’s materials in accordance with section 89(1) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the landlord’s materials on October 11, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

#### Preliminary Issue – Vacant Rental Unit

At the outset of the hearing the landlord stated the tenant moved out on October 20, 2022.

The application for an order of possession, cancellation of the Notice and for an order for the landlord to comply with the Act are moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be

determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession, cancellation of the Notice and for an order for the landlord to comply with the Act.

#### Preliminary Issue – Tenant's application for a monetary order

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

##### **Rule 7 – During the hearing**

##### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

##### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the tenant, I order the tenant's application for a monetary order dismissed without leave to reapply.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

#### Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend his application for \$1,750.00 in unpaid rent for September 2022 to include an additional \$1,750 for the unpaid rent for October 2022.

The increase in the landlord's monetary claim for unpaid rent of October 2022 should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$3,500.00.

#### Issues to be Decided

Is the landlord entitled to:

- a monetary order for unpaid rent?
- an authorization to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and

important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord testified the tenancy started on January 01, 2021. Monthly rent was \$1,750.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of \$875.00 and a pet damage deposit of \$875.00. The landlord currently holds in trust the security and pet damage deposits (the deposits) in the amount of \$1,750.00. The tenancy agreement was submitted into evidence.

The landlord is seeking a monetary order in the amount of \$3,500.00, as the tenant did not pay rent due on September and October 01, 2022.

The landlord submitted a direct request worksheet indicating the tenant did not pay rent due on September 01, 2022 in the amount of \$1,750.00.

### Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Based on the landlord's convincing undisputed testimony and the tenancy agreement, I find the landlord and the tenant agreed to a tenancy and the tenant was obligated to pay monthly rent in the amount of \$1,750.00 on the first day of each month.

Based on the landlord's convincing testimony and the direct request worksheet, I find the tenant did not pay rent due on September and October 01, 2022.

Per section 26(1) of the Act, I award the landlord September and October rent in the amount of \$3,500.00 (\$1,750.00 x 2 months).

As the landlord was successful, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a

landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$1,750.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent for September and October 2022 (\$1,750.00 x 2)	3,500.00
Filing fee	100.00
Subtotal	3,600.00
Deposits (minus)	1,750.00
<b>Total:</b>	<b>1,850.00</b>

### Conclusion

Per sections 26 and 72 of the Act, I authorize the landlord to retain the \$1,750.00 deposits and award the landlord \$1,850.00. The landlord is provided with this order in the above terms and the tenant must be served with this order. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: February 06, 2023

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Residential Tenancy Branch