



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR (Tenant)  
OPR-DR, MNR-DR, FFL (Landlord)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the “Applications”).

The Tenant filed their application November 10, 2022 (the “Tenant’s Application”). The Tenant applied to dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated November 05, 2022 (the “Notice”).

The Landlord filed their application November 19, 2022 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on the Notice
- To recover unpaid rent
- To recover the filing fee

The Landlord and their spouse (the “Landlords”) appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlords. I told the Landlords they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlords provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence for the Landlord’s Application.

The Landlords testified that the hearing package and their evidence were sent to the Tenant at the rental unit November 24, 2022 and that Tracking Number 695 relates to this. The Landlord provided documentary evidence of service. I looked Tracking

Number 695 up on the Canada Post website which shows the package was unclaimed after two notice cards were left.

Based on the undisputed testimony of the Landlords, documentary evidence of service and Canada Post tracking information, I am satisfied the Tenant was served with the hearing package and evidence for the Landlord's Application in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). The Tenant cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the Act, the Tenant is deemed to have received the hearing package and evidence November 29, 2022. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service of the hearing package and evidence for the Landlord's Application, I proceeded with the hearing in the absence of the Tenant. The Landlords were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Pursuant to rule 7.3 of the Rules, I dismiss the Tenant's Application without leave to re-apply because the Tenant did not attend the hearing and the Landlord did. I have only considered the Landlord's Application.

#### 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 recover the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted. The tenancy started May 15, 2022. Rent is \$1,500.00 per month due on the first day of each month. The Tenant paid a \$750.00 security deposit.

The Landlords sought to keep the security deposit towards unpaid rent.

The Notice was submitted. The Notice has an effective date of November 18, 2022. The grounds for the Notice are that the Tenant failed to pay \$1,500.00 due November 01, 2022, and \$101.00 due September 01, 2022.

The Landlords testified as follows.

The Notice was served on the Tenant in person November 05, 2022.

The Tenant failed to pay \$101.00 of September rent and all of November rent.

The Tenant made the following payments after the Notice was issued:

- \$102.00 November 07, 2022
- \$1,000.00 November 25, 2022
- \$300.00 December
- \$1,200.00 December
- \$1,200.00 January
- \$1,200.00 February

The Tenant did not have authority under the *Act* to withhold rent.

The Tenant currently owes \$2,599.00 in rent up until March 2023.

The Landlords sought an Order of Possession effective two days after service on the Tenant.

The Landlord submitted documentary evidence to support their position.

### Analysis

Section 26(1) of the *Act* states:

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.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails 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.

Based on the undisputed testimony of the Landlords and documentary evidence, I find the following.

The Tenant is required to pay the Landlord \$1,500.00 in rent per month by the first day of each month pursuant to the tenancy agreement.

The Tenant failed to pay \$101.00 for September rent and \$1,500.00 for November rent. The Tenant did not have authority under the *Act* to withhold this rent. The Landlord was entitled to serve the Notice.

The Notice was served in accordance with section 88(a) of the *Act* and the Tenant received it November 05, 2022.

The Notice complies with section 52 of the *Act*.

The Tenant had five days from receipt of the Notice to pay the outstanding rent or dispute the Notice.

The Tenant paid \$102.00 on November 07, 2022; however, did not pay the full amount outstanding by November 10, 2022, as required to cancel the Notice.

The Tenant disputed the Notice November 10, 2022, within time. However, the Tenant did not appear at the hearing or provide a valid basis for the dispute and the dispute has been dismissed without leave to re-apply.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52...and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Pursuant to section 55(1) of the *Act*, the Landlord is entitled to an Order of Possession effective two days after service on the Tenant.

The Tenant owes the Landlord \$2,599.00 in unpaid rent up until the end of March. I award the Landlord this amount. I acknowledged I have issued an Order of Possession effective on two days notice to the Tenant and awarded the Landlord all of March rent. I find this appropriate given how late in March it is.

Given the Landlord was successful in the Landlord's Application, I award them the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant owes the Landlord \$2,699.00. The Landlord can keep the security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$1,949.00.

### Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply

with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is issued a Monetary Order for \$1,949.00. 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: March 27, 2023

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Residential Tenancy Branch