



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

### Dispute Codes

Landlord: **OPC, MNRL-S, FFL**

Tenant: **CNR-MT, MNRT, MNDCT, RP, FFT**

### Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The landlord applied for:

- An order of possession for cause pursuant to sections 47 and 55;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66;
- An order to recover the cost of emergency repairs made by the tenant during the tenancy pursuant to section 33
- A monetary order for damages or compensation pursuant section 67;
- An order for repairs to be made to the unit, site or property pursuant to section 32; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the landlord and the tenant attended the hearing. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any

recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an affirmation to tell the truth and they both confirmed that they were not recording the hearing.

### Preliminary Issues

The tenant acknowledged being served with the landlord's Notice of Dispute Resolution Proceedings package. The landlord did not acknowledge service of the tenant's Notice of Dispute Resolution Proceedings package.

The tenant testified he served the landlord with the Notice of Dispute Resolution Proceedings package via registered mail however he does not remember the exact date it was sent and he does not have the tracking number for the mailing.

Rule 3.5 of the Residential Tenancy Branch rules of procedures states:

#### **3.5 Proof of service required at the dispute resolution hearing**

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

I find that the tenant did not provide sufficient evidence to satisfy me the landlord was served with his Notice of Dispute Resolution Proceedings package and I dismissed his application with leave to reapply at the commencement of the hearing.

At the commencement of the hearing, the tenant advised me that this hearing is a waste of time as he is vacating the rental unit at the end of the month. Subsequently, the parties agreed to mutually end the tenancy.

### Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. I recorded the following term of settlement during the hearing:

**The parties mutually agree to end the tenancy. This tenancy will end at 1:00 p.m. on May 31, 2023 by which time the tenant and any other occupant will have vacated the rental unit.**

Both parties understood and agreed that the above terms. As the parties resolved this matter by agreement, I make no findings of fact or law with respect to this aspect of the application before me and I make no determinations on whether the notices to end tenancy were valid.

As the primary issue of the tenancy settled by agreement, I decline to exercise my discretion under section 72 to award the filing fee to either party.

The only remaining issue not resolved was the landlord's claim for a monetary order for unpaid rent.

#### Preliminary Issue

Near the end of the hearing, at 10:05 a.m., the tenant hung up. After the tenant hung up, the landlord's email address was confirmed, and I advised the landlord that the additional parties named on his application for dispute resolution would be removed from this decision as their names do not appear on the tenancy agreement. No other orders were made.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

#### Background, Evidence and Analysis

The tenancy agreement provided as evidence shows the tenant pays \$3,500.00 rent per month. The landlord collected a \$1,750.00 security deposit at the commencement of the tenancy.

The landlord testified that the tenant sometimes pays rent in cash and sometimes via e-transfer. When the tenant pays in cash, the landlord does not issue receipts. The landlord claimed unpaid rent of \$100.00 for December 2022 and \$500.00 for February 2023 however acknowledged that it's possible he was given cash by the tenant and he doesn't have any record of it. March and April's rent was fully paid.

The landlord testified that for the month of May, he received two e-transfers on May 1<sup>st</sup> for \$1,000.00 and \$2,000.00. The landlord gave his testimony while accessing his banking records during the hearing.

The tenant testified that he sent the landlord \$1,000.00 due to a limit on his withdrawals at the bank. His girlfriend sent the remaining \$2,500.00. The tenant did not have access to his girlfriend's banking information during the hearing and was unable to verify his statement about how much his girlfriend paid.

The onus to prove their case falls on the applicant pursuant to Rule 6.6 of the Rules of Procedure. I find the landlord was forthright in acknowledging the possibility that he was paid cash for the rent shortfalls in December and February that he originally claimed for. He also referred to his banking records while providing testimony while the tenant relied solely on his memory. On a balance of probabilities, I find the landlord's version of the facts is more likely to be accurate and I find the tenant only paid \$3,000.00 of the \$3,500.00 rent for the month of May. Consequently, I award the landlord a monetary order in the amount of \$500.00.

The landlord holds the tenant's \$1,750.00 security deposit. In accordance with the offsetting provisions of section 72, the landlord may retain \$500.00 of the tenant's security deposit in full satisfaction of the monetary order.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is required to serve this Order of Possession upon the tenant and may enforce it as early as 1:00 p.m. on May 31, 2023, should the landlord be required to do so.

The landlord may retain \$500.00 of the tenant's security deposit pursuant to section 72 of the Act.

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: May 05, 2023

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Residential Tenancy Branch