



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

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This hearing was convened following applications for dispute resolution from both parties under the Residential Tenancy Act (the Act), where were heard simultaneously.

The Tenant requests the following:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent under sections 46 and 55 of the Act
- compensation for my monetary loss or other money owed under section 67 of the Act;
- a reduction in rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act;
- An Order for repairs to be made to the rental unit under section 32 of the Act;
- an Order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act;
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act.

The Landlord requests the following:

- An Order of Possession after issuing the 10 Day Notice under section 55(2) of the Act;
- A Monetary Order for unpaid rent under sections 26 and 67 of the Act;
- compensation for damage caused by the tenant, their pets or guests to the rental unit under section 67 of the Act;
- compensation for my monetary loss or other money owed under section 67 of the Act;
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act.

## **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

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As the Landlord acknowledged service of the Tenant's Notice of Dispute Resolution Proceeding package and did not raise any concerns regarding service.

As the Tenant acknowledged service of the Landlord's Notice of Dispute Resolution Proceeding Package and did not raise any concerns regarding service.

## **Service of Evidence**

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Due to time constraints, I was unable hear all claims of the parties. For this reason, I informed the parties at the outset that I was only going to hear only the most urgent claims to ensure we finish on time. In the circumstances, I determined the most urgent claim to be whether the tenancy would continue and if not, whether the landlord was entitled to an Order of Possession and Monetary Order for unpaid rent.

Although the parties indicated that they might not have received certain pieces of the other party's digital evidence, I determined that these items pertained to claims which would not be deciding at this hearing.

## **Issues to be Decided**

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Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the tenant entitled to compensation for my monetary loss or other money owed?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to an order for the landlord to make repairs to the rental unit?

Is the landlord entitled to compensation for my monetary loss or other money owed?

Is the landlord entitled to compensation for damage caused by the tenant, their pets or guests to the rental unit?

## **Background and Evidence**

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I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties agreed that the monthly rent was \$1,250.00, and that it was due on first day of the month. The method by which was paid varied. Sometimes rent was paid in cash, sometimes by e-transfer. The Tenant provided a security deposit in the amount of \$500.

On June 2 the Tenant requested an extension until June 6 for payment of rent due to financial issues. The Landlords agreed. On June 6, rent had still not been paid.

The Landlords' evidence was that they made attempts to discuss rent with the Tenant which included knocking on her door but were unsuccessful in obtaining payment.

On June 7 the Landlords attempted to serve an eviction notice to the Tenant by attachment the door of the rental unit. The Landlords subsequently realized that the form that they had attached to the door was not a 10 Day Notice to End Tenancy, but rather a Proof of Service document for a 10 Day Notice to End Tenancy.

The Tenant testified that she saw the notice in the late evening of June 7. The following afternoon she had left an envelope containing \$1,250.00 in cash, all of the outstanding rent for June, inside the Landlords screen door. She said that nobody contacted her again about the outstanding rent until approximately June 17.

The Landlords dispute that the rent was provided as claimed by the Tenant. The Landlords had gone camping in their motorhome on June 8 and K.E., their granddaughter, was house-sitting for them. K.E. testified that she visited their home every day and that there was no envelope at the door. She added that no communications were received from the Tenant regarding payment, nor were any photos provided.

The Tenant replied that the Landlords had instructed that, if they were not home, she was to place cash in an envelope inside their screen door. She said that she did not consider providing an e-transfer as the Landlords found e-transfers upsetting.

When asked about the source of the cash that was provided the Tenant stated that she received a widow's pension in the amount of \$650.00 and then obtained an e-transfer from her mother in the amount of \$600 that evening. She then visited a bank the following morning to withdraw the funds.

K.E. proposed that had there been a withdrawal amount the Tenant could have provided bank statements corroborating this to the Landlords but did not.

On June 30 K.E. served the Tenant with the correct form for a 10 Day Notice for unpaid rent.

At the hearing the Tenant acknowledged that she had not paid rent for the month of July.

On August 2, the Tenant vacated the property without providing notice to the Landlords. The Tenant acknowledged that she had not paid rent for the month of August.

The Landlords suspected that the Tenant had abandoned the rental unit and obtained possession of it on August 3, 2023.

## Analysis

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When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

### **Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?**

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- 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 (Residential Tenancy Branch) form

I have reviewed the 10 Day Notice and note that it is signed and dated by the Landlord, and that it indicates that there is unpaid rent. I find that it complies with section 52 of the Act.

The Tenant has vacated the rental unit and the tenancy has ended. In the circumstances, I find that the Tenants' application for cancellation to be redundant. Furthermore, as the Landlord has indicated that they have possession of the unit, I find that an Order of Possession is unnecessary.

For the above reasons, the tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is dismissed, without leave to reapply.

**Is the tenant entitled to compensation for my monetary loss or other money owed?**

I informed the parties at the outset that, due to time constraints, I would not be able to hear this claim. For this reason, the tenant's application for compensation for my monetary loss or other money owed under sections 67 of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

**Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?**

I informed the parties at the outset that due to time constraints I would not be able to hear this claim. For this reason, the tenant's application for an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

**Is the tenant entitled to an order for the landlord to make repairs to the rental unit?**

As the tenancy has ended, I find the tenant's application for an order for the landlord to make repairs to the rental unit under sections 32 and 62 of the Act is redundant. It is dismissed without leave to reapply.

**Is the tenant entitled to an Order requiring the landlord to comply with the Act, regulation or tenancy agreement?**

As the tenancy has ended, I find the tenant's application for an order requiring the landlord to comply with the Act, regulation or tenancy agreement is redundant. It is dismissed without leave to reapply.

**Is the landlord entitled to compensation for damage caused by the tenant, their pets or guests to the rental unit?**

I informed the parties at the outset that due to time constraints I would not be able to hear this claim. For this reason, the landlord's application for compensation for damage caused by the tenant under sections 67 of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

**Is the landlord entitled to compensation for my monetary loss or other money owed?**

I informed the parties at the outset that due to time constraints I would not be able to hear this claim. For this reason, the landlord's application for compensation for my monetary loss or other money owed under sections 67 of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

**Is the landlord entitled to a Monetary Order for unpaid rent?**

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

The parties disagree as to whether June's rent was paid. The Tenant testified that she had left an envelope containing \$1,250.00 in cash, June's rent, inside the Landlords screen door. I do not find the Tenant's evidence to be convincing in this regard. The Tenant had several months to obtain documentary evidence to substantiate her claim that she had withdrawn \$1,250 on June 8, but has not done so. I note that while the Tenant's evidence includes photos of envelopes containing cash with respect to previous payments and multiple electronic banking screenshots corroborating e-transfers from her bank account to the Landlord, her evidence is devoid of any banking statements or electronic banking screenshots pertaining to the date she claims to have withdrawn funds.

The Tenant did not explain why bank statements, which could have been obtained directly from her bank with relative ease, were not provided. I have also considered the fact that the Tenant did not attempt to communicate to the Landlords that payment had been made at the time she claims to have made it. As a result of the Tenant's failure to make reasonable efforts to communicate and corroborate the payment, I am not convinced that the Tenant made the payment as claimed. I find it to be more likely that she did not.

The parties agreed that the Tenant owed rent to the Landlords for the month of July.

As the Tenancy Agreement indicates that the term was on a month-to-month basis and the Tenant did not pay rent for August, I find that the Tenant owed rent to the Landlords for this month as well.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent in the amount of \$3,750.00. This amount was calculated as follows:

June rent	\$1,250.00
July rent	\$1,250.00
August rent	+ \$1,250.00
	\$3,750.00

**Is the tenant entitled to recover the filing fee for this application from the landlord?**

As the tenant was not successful in this application, the tenant's application for authorization to recover the filing fee for this application from the landlord under section 72 of the Act is dismissed, without leave to reapply.

**Is the landlord entitled to recover the filing fee for this application from the tenant?**

As the landlord was successful in this application, the landlord's application for authorization to recover their \$100 filing fee for this application from the tenant under section 72 of the Act is granted.

## Conclusion

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I grant the landlords a Monetary Order in the amount of **\$3,850.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$3,750.00
authorization to recover the filing fee for this application from the tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$3,850.00</b>

The landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. 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.

The Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act is dismissed, without 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: September 27, 2023

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Residential Tenancy Branch