



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, CNL, MNRT, MNDCT, RR, FFT, OPR, OPL, MNRL-S,  
MNDCL, FFL

### **Introduction**

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenant on August 3, 2023 and an Application filed by the Landlord on September 14, 2023.

The Tenant applied:

- For cancellation of the 10 Day Notice to End Tenancy
- For cancellation of a 2 Month Notice to End Tenancy
- For compensation from the Landlord for the costs for emergency repairs
- Compensation for a monetary loss or other money owed
- Reduction in rent for repairs, services or facilities agreed upon but not provided
- To recover the Application filing fee

The Landlord applied:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent
- For an Order of Possession based on a 2 Month Notice to End Tenancy for Landlord's Use
- For a Monetary Order for unpaid rent
- Compensation for a monetary loss or other money owed
- To recover the Application filing fee

Landlord J.S. attended the hearing for the Landlord.

No one attended the hearing for the Tenant.

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

I find that Landlord J.S. was served on August 10, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that Tenant S.S. was served on September 15, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

## **Service of Evidence**

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

## **Preliminary Matters – Previous Adjourned Hearing**

The matters under review in this hearing were scheduled to be heard at a previous hearing held on October 10, 2023. At that hearing, the Tenant requested and was granted an adjournment based on her inability to proceed due to an emergency health situation.

The Tenant was advised in the Arbitrator's interim decision that she was to appoint a representative to attend the new hearing on her behalf if she was unable to attend herself and that failure to follow this condition could result in the dismissal of her application.

As the Tenant and Landlord had both testified at the October 10, 2023, hearing that the Tenant had moved out of the rental unit on September 13, 2023, the Tenant's application to have the notices cancelled and the Landlord's application for an Order of Possession were dismissed.

As the Tenant did not attend this hearing or appoint a representative to attend on her behalf, the balance of the Tenant's application is dismissed in its entirety.

### **Issues to be Decided**

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

Is the Landlord entitled to a monetary award for a monetary loss or other money owed?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

### **Background and Evidence**

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

Evidence was provided showing that this tenancy began on November 1, 2019, with a monthly rent of \$2,000.00, due on first day of the month and a security deposit in the amount of \$1,000.00. The Landlord holds the security deposit in trust.

The Landlord testified that she was also a tenant at the time the Tenant was renting her unit. On June 3, 2023 she sent the Tenant an email advising her that the owners of the property she was renting were putting the property on the market and that if it sells she would need to move back into her condo. A copy of this email was submitted by the Landlord as evidence. On June 12, 2023, the Landlord sent the Tenant another email advising her that the property she was renting had been sold and as a result the Tenant would need to be out of the unit by August 6 or August 12, 2023, at the latest.

On August 9, 2023, the Landlord served the Tenant with a 10 Day Notice for \$4,500.00 in unpaid rent by posting a copy to the door, leaving a copy in front of the Tenant's mailbox and emailing it to a pre-agreed address.

The Landlord testified that she received \$500.00 for June 2023 rent but has not received any additional rent to date. She stated that she is seeking all unpaid rent up to and including September 13, 2023.

The Landlord also testified that she is seeking compensation for costs incurred as a result of the Tenant not moving out of her condo by August 12, 2023, as the 2 Month Notice required. Included in the costs the Landlord is seeking are expenses for storage, moving truck rental, fuel, food, storage insurance and change of address fees. A copy of a completed Monetary Order Worksheet was submitted by the Landlord.

### Analysis

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

Section 26 of the Act states that a Tenant must pay rent to the Landlord, regardless of whether the Landlord complies with the Act, regulations or tenancy agreement, unless the Tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence before me and the uncontested testimony of the Landlord, I find that the Landlord has established a claim for unpaid rent owing for June, July, August and thirteen days in September 2023.

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 award for unpaid rent under section 67 of the Act, in the amount of \$6,366.66. Under section 38 of the Act, I order the Landlord to keep the Tenant's security deposit in the amount of \$1,016.83, including interest, in partial satisfaction of the unpaid rent.

#### **Is the Landlord entitled to a monetary award for a monetary loss or other money owed?**

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.

I find that the Landlord did not serve a 2 Month Notice to End Tenancy for Landlord Use in accordance with sections 49 and 52 of the Act and therefore the Tenant was under no obligation to leave on August 12, 2023, as requested by the Landlord on June 12, 2023, based on a 2 Month Notice. I find that had the Landlord served a 2 Month Notice in accordance with sections 49 and 52 of the Act on June 12, 2023, the tenancy would not have ended until August 31, 2023 and the Landlord, who was being evicted from her own rental unit would have had to incur moving, storage, housing and other related costs as a direct result of moving out of her rental unit on August 6, 2023, while waiting for the tenancy with her Tenant to end on August 31, 2023 in accordance with the Act.

I further find that the Landlord did not serve the 10 Day Notice until after she had already moved out of her rental unit and incurred the associated moving expenses and that she could have moved into her unit on September 14, 2023, as the tenant had vacated the unit on September 13, 2023, thereby ending the tenancy and making the unit available to the Landlord for occupancy.

I find therefore that the Landlord did not suffer a loss and hereby dismiss the Landlord's application for a monetary award for loss under section 67 of the Act 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 their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The Tenant's application is dismissed in its entirety.

The Landlord's application for a Monetary Order for unpaid rent is granted.

I grant the Landlord a Monetary Order in the amount of **\$5,449.83** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent under section 67 of the Act	\$6,366.66
authorization to keep the Tenant's security deposit including interest under section 38 of the Act	-\$1,016.83
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>\$5,449.83</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 Landlord's application for compensation for monetary loss or monies owed is dismissed without leave to reapply.

The Landlord's request for repayment of the filing fee is granted.

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: November 13, 2023

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Residential Tenancy Branch