



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, MND, MNDC, MNSD, FF; MT, CNR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;

Tenant TH (the "tenant") and the landlord's agent (the "landlord") attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*. Both parties were given full opportunity to give affirmed testimony and present their evidence.

### Preliminary Issue – Amendment of Landlord's Application from Order of Possession for Cause to Order of Possession for Unpaid Rent

Although the landlord applied for an order of possession for cause, the only notice provided or testified to was in relation to a notice for unpaid rent dated January 3, 2017. For this reason, I find the landlord inadvertently applied for an order of possession for

cause when the intent of the landlord was to obtain an order of possession for unpaid rent.

I find that the tenant knew the landlord was seeking an order of possession for unpaid rent as that is the notice the tenant applied to cancel. In accordance with section 64(3) of the *Act*, I amend the landlord's application from an order of possession for cause to an order of possession for unpaid rent.

#### Preliminary Issue – Amendment of Landlord's Application to Include Rent

The landlord confirmed that she wished to amend the landlord's application to increase her monetary claim to include February unpaid rent of \$759.40 total. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if she did not pay the rent or vacate the rental unit to allow it to be re-rented. Based on the undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to include a monetary claim for February 2017 unpaid rent of \$759.40 total.

#### Preliminary Issue – More Time

The tenant confirmed receipt of the landlord's 10 Day Notice, dated January 3, 2017 by way of posting to her rental unit door, on January 3, 2017.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy the tenant may, within 5 days after receiving the notice, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Because the 10 Day Notice has been duly served on January 3, 2017 the tenant was required to file her application to dispute the 10 Day Notice no later than January 8, 2017. The tenant filed her application on January 16, 2017, well past the allotted time.

Under section 66 of the *Act*, the director may extend a time limit established by the *Act*, in exceptional circumstances.

The tenant testified that she was unable to file in time because she felt defeated, depressed and was not in the right head space. I find the reasons for filing late are insufficient to establish exceptional circumstances existed which prevented the tenant from filing an application in time.

For the above reasons, I dismiss the tenant's application for more time to make an application to cancel the landlord's 10 Day Notice. The tenant's application is dismissed in its entirety.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act Regulation* or tenancy agreement?

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on May 1, 2012 on a fixed term until April 30, 2013 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$759.40 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$360.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

A 10 Day Notice for unpaid rent of \$369.00 plus a \$20.00 late fee was issued to the tenants on January 3, 2017. The notice indicates an effective move-out-date of January 16, 2017.

The landlord seeks a monetary order of \$1,128.40 for unpaid rent from January 2017 to February 2017. The landlord claimed that the tenants paid a total of \$340.00 in rent for the above two months.

The landlord testified she was seeking \$650.00 in damages, specifically to cover the anticipated damage and cleaning.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the

notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent and her application has been dismissed, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$759.40. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from January 2017 to February 2017. Therefore, I find that the landlord is entitled to \$1,128.40 in rent.

Section 7 of the *Regulation* establishes that a landlord may charge an administration fee of not more than \$25.00 for the return of a tenant's cheque or for late payment of rent if the tenancy agreement includes a provision for such a fee. The tenancy agreement before me includes such a fee; therefore I award the landlord \$20.00 as claimed by the landlord.

Although the landlord anticipates there will be costs associated with the vacancy, I find the claim to damages premature as the tenant had not vacated the rental unit at the time the application was made. For this reason I dismiss the landlord's application for damages with leave to reapply. Therefore, I find that the landlord is not entitled to any compensation other than outstanding rent in the amount of \$1,128.40 and late fee in the amount of \$20.00 for a total of \$1,148.40

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$360.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$788.40. As the landlord was

successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$888.40.

Conclusion

The tenant's application is dismissed in its entirety.

I grant an order of possession to the landlord effective **two (2) days after service on the tenant.**

I issue a monetary order in the landlord's favour in the amount of \$888.40 against the tenant.

I dismiss the landlord's application for damages to the rental unit with 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: February 10, 2017

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Residential Tenancy Branch