



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GURNAN HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPC, MNDCL-S, MNRL-S, FFL

### Introduction

On September 14, 2018, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act*, seeking a Monetary Order for unpaid rent and compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenants did not appear. The Landlord provided a solemn affirmation.

The Landlord advised that the Notice of Hearing package and evidence was served to each Tenant by registered mail on September 17, 2018 and a receipt was provided to confirm service. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenants were deemed to have received the Notice of Hearing package and evidence.

The Landlord submitted that the One Month Notice to End Tenancy for Cause was posted to the Tenants’ door on September 4, 2018. Therefore, as per Section 88 of the *Act*, this Notice was deemed received on September 7, 2018. Section 47 of the *Act* states that the Tenants may dispute the Notice by making an Application for Dispute Resolution within 10 days after the date they received the Notice. As such, the last day the Tenants could make their Application was September 17, 2018. As the Landlord made this Application on September 14, 2018, the Application with respect to the One Month Notice to End the Tenancy for Cause was premature. Consequently, I have

dismissed the Landlord's Application with respect to the One Month Notice to End the Tenancy for Cause with leave to reapply.

As well, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent, and the other claims were dismissed with leave to reapply. The Landlord is at liberty to apply for any other claims under a new and separate Application.

The Landlord acknowledged the evidence submitted and was given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### 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?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

The Landlord stated that tenancy started on March 1, 2018 and that rent was \$2,400.00 per month, due on the first of each month. A security deposit of \$1,200.00 was paid.

The Landlord submitted that the Tenants had not paid September 2018 rent in full, so he served the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") to the Tenants on September 4, 2018 by posting it to the door. The Notice indicated that \$2,400.00 was outstanding on September 1, 2018 for September 2018 rent. The effective end date of the Notice was September 14, 2018. The Landlord confirmed that the Tenants did not pay the rent arrears for September 2018 and are now in arrears for October 2018 as well.

The Landlord submitted a photograph of the Notice into evidence; however, the quality of the photograph was poor and the details on the Notice could not be read clearly. In accordance with Rule 3.19 of the Rules of Procedure, an Arbitrator may provide

direction on requesting late evidence. A copy of the Notice that is the subject of this dispute was requested as it is essential to the matter at hand. The Landlord was advised that he would be permitted to submit a more legible copy of the Notice to the Residential Tenancy Branch by the end of the business day on October 26, 2018. The Notice was submitted personally to the Residential Tenancy Branch on October 26, 2018, after the hearing.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. Section 52(3) states that in order to be effective, the Notice must be in the approved form and the approved form for a 10 Day Notice to End Tenancy for Unpaid Rent is two pages. I find it important to note that page one of the Notice states that both pages must be given to the Tenants.

From the evidence that the Landlord submitted, it appears as if the second page that he has served the Tenants is the second page of a One Month Notice to End Tenancy for Cause. The second page of the Notice outlines important information to the Tenants, such as the time provided in which to dispute the Notice or pay the rent owing. However, the Tenants would not have been aware of this without the information on the second page of the Notice. Furthermore, there is different information on the back of the One Month Notice to End Tenancy for Cause, and providing this to the Tenants when a 10 Day Notice to End Tenancy for Unpaid Rent was served would be prejudicial to the Tenants as the requirements to pay the rent to cancel the Notice are not outlined and, amongst other issues, the timeline to respond to the Notice is different. As the Landlord only served the Tenants with one page of the Notice, I am not satisfied that the full 10 Day Notice to End Tenancy for Unpaid Rent was served.

Furthermore, the copies of the Notice that the Landlord submitted into evidence are photographs where the information on the Notice is not legible or discernable. As both pages of the Notice do not appear to have been served to the Tenants, and as it is not possible to read the information on the first page of the Notice clearly, I am not satisfied

that this is a valid Notice that complies with Section 52 of the *Act*. Therefore, I cannot grant the Landlord an Order of Possession. The Landlord's application for an Order of Possession is dismissed, without leave to reapply.

As the Landlord was unsuccessful in his claims, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply. The 10 Day Notice, dated September 4, 2018, is of no force and effect. This tenancy continues until ended in accordance with 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: November 1, 2018

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Residential Tenancy Branch