



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf

The landlord's application was originally initiated as a direct request proceeding, which is a non-participatory hearing. In an interim decision issued on October 4, 2018, an adjudicator determined that the matter was not appropriate for a non-participatory hearing and ordered that a participatory hearing take place. The interim decision directed the landlord to serve the tenant with a copy of the interim decision and a Notice of Reconvened Hearing (the "Hearing Package").

The landlord testified that on October 6, 2018 she forwarded Hearing Package via registered mail to the tenant. The landlord provided the Canada Post tracking number into oral evidence to verify this method of service; this number is detailed on the front page of this Decision. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Hearing Package on October 11, 2018, the fifth day after its registered mailing

Preliminary Issue – Amendment of Landlord's Application

The landlord confirmed that she wished to amend the landlord's application to increase her \$320.00 monetary claim to include July and August 2018 rent in the amount of \$320.00 each. She testified that because the tenant failed to complete an application for subsidized housing at the end of August 2018, monthly rent converted to the economic rate of \$645.00 effective September 1, 2018. Therefore the landlord seeks to recover September and October 2018 rent in the amount of \$645.00 each. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if they did not pay 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 July, August, September and October 2018 rent in the total amount of \$1,930.00.

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

Background and Evidence

As per the testimony of the landlord, the tenancy began on October 1, 2013 on a month-to-month basis. Subsidized rent in the amount of \$320.00 is payable on the first of each month. Economic rent in the amount of \$645.00 became payable on the first of each month effective September 1, 2018. The tenant remitted a security deposit in the amount of \$278.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") was issued to the tenant on June 12, 2018 by way of posting to the rental unit door where the tenant resides. The notice indicates an effective move-out-date of June 26, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on June 15, 2018, three days after its posting.

The landlord seeks a monetary order of \$2,250.00 for unpaid rent from June 2018 to October 2018. The landlord claimed that the tenant has not paid any rent for the above

five months. The landlord also seeks 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 or file an application to dispute the notice, 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*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find the landlord proved that the subsidized rent for this unit is \$320.00 and the economic rent effective September 1, 2018 is \$645.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from June 2018 to October 2018. Therefore, I find that the landlord is entitled to \$2,250.00 in rent. 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 \$2,350.00.

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 \$278.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$2,072.00.

### Conclusion

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 \$2,072.00.

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 16, 2018

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Residential Tenancy Branch