



# 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 landlords' 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 landlords (collectively "the landlord") and tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the tenant confirmed that she had received the landlords' application and evidence. As the tenant did not raise any issues regarding service of the application or evidence, I find that the tenant was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue – Landlord's Evidence

Pursuant to Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, a respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch. At the outset of the hearing, the tenant testified that she did not serve her evidence to the landlord. Because the tenant did not serve her evidence and the landlord did not receive the tenant's evidence, I have not relied on it to form any part of my decision.

### Preliminary Issue – Amendment of Landlords' Application

The landlords seek to amend the landlords' application to increase their monetary claim to include November unpaid rent in the amount of \$1,000.00. I find that the tenant should reasonably have known that the landlords would suffer this loss of income if they 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 landlords' application to include a monetary claim for November 2018 unpaid rent in the amount of \$1,000.00.

#### Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

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

#### Background and Evidence

As per the testimony of the parties, this tenancy, based on an oral agreement began on September 15, 2018. Rent in the amount of \$1,000.00 is payable on the first of each month. The tenant remitted a security in the amount of \$500.00 at the start of the tenancy, which the landlords still retain 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 October 18, 2018 by way of posting to the rental unit door where the tenant resides. The notice indicates an effective move-out-date of October 18, 2018. The tenant confirms receipt of the 10 Day Notice on October 21, 2018.

The landlords seek a monetary order of \$2,000.00 for unpaid rent from October 2018 to November 2018. The landlords claimed that the tenant has not paid any rent for the above two months. The tenant confirmed rent is owed in the amounts described by the landlord.

The landlords also seek 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 landlords' 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 within five days, 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. Pursuant to section 53 of the *Act*, the effective date of the 10 Day Notice is corrected to October 28, 2018. As the tenant has remained in the unit beyond October 28, 2018, I find that the landlords are 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 last 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 that the landlords proved that the current rent for this unit is \$1,000.00. I find the landlords provided undisputed evidence that the tenant failed to pay full rent from October to November 2018. Therefore, I find that the landlords are entitled to \$2,000.00 in rent.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security deposit in the total amount of \$500.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,500.00. As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,600.00.

### Conclusion

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

I issue a monetary order in the landlords' favour in the amount of \$1,600.00.

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 20, 2018

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Residential Tenancy Branch