



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding North Country Properties  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPC, MNRL –S; MNDCL –S, FFL

### Introduction

This participatory hearing was ordered pursuant to a decision issued on January 2, 2019 by an Adjudicator in response to the landlord's application for an Order of Possession and Monetary Order for unpaid rent under the Direct Request procedure. The landlord's agent appeared for the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open for at least 30 minutes in order to give the tenant sufficient opportunity to appear.

Since the tenant did not appear for the hearing, I explored service of hearing documents upon the tenant. The landlord testified that she sent the hearing documents and evidence to the tenant via registered mail on January 2, 2019; however, the registered mail was returned as unclaimed. The landlord provided the registered mail receipt, including tracking number, as proof of service. The landlord also posted the hearing documents to the tenant's door on January 9, 2019. The landlord's agent confirmed that the tenant continues to occupy the rental unit.

Section 90 of the Act deems a person to be in receipt of documents mailed to them five days after mailing, even if the recipient refuses to accept or pick up their mail. I was satisfied the tenant was duly notified of today's proceeding by registered mail sent to him on January 2, 2019 and I continued to hear from the landlord's agent without the tenant present.

I amended the style of cause to reflect the name of the landlord, as it appears on the tenant agreement and Notices to End tenancy, by removing the landlord's agent's name from the style of cause.

In filing this application the amount of monetary compensation sought by the landlord was equivalent to the amount appearing on the 10 Day Notice; however, the tenant

made some payments since then and has continued to occupy the rental unit. The landlord requested the Monetary Order include unpaid and loss of rent up to and including February 2019, less payments the tenant made, since the tenant continues to occupy the rental unit. I find this request to be reasonably foreseeable in cases where the tenant continues to occupy the rental unit and I permitted the amendment.

The landlord also requested the monetary claim be amended to request authorization to retain the security deposit in partial satisfaction of unpaid rent. I found this request non-prejudicial since it reduces any Monetary Order I would provide.

The landlord notified me that the landlord had previously made an Application for Dispute Resolution with respect to these matters but that Application was rejected. Upon review of the previous decision, I noted that the matter was dismissed with leave to reapply. The file number for the previous Application is referred to on the cover page of this decision.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to Monetary Order for unpaid and loss of rent?

Is the landlord authorized to retain the tenant's security deposit?

#### Background and Evidence

The tenant began occupying the rental unit with his spouse in September 2004. A security deposit of \$310.00 was collected and at that time the rent was set at \$620.00 payable on the first day of every month. The tenant's spouse moved out of the unit several years ago and the landlord and the tenant continued a tenancy. The rent has increased over the years with the last rent increase bringing the monthly rent obligation to \$740.00.

The landlord submitted that the tenant is frequently behind in rent and in 2013 the landlord obtained an Order of Possession against the tenant, but the landlord and tenant agreed to reinstate the tenancy (file number referred to on the cover page of this decision)

On September 10, 2018 the landlord put a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") and a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") in the door jamb of the rental unit. The landlord sent the tenant a message

advising him that she had put Notices in the door. The tenant responded to acknowledge receipt of the message. The landlord returned to the property a short time later and found the Notices had been removed.

The 10 Day Notice indicates rent of \$1,908.00 was outstanding as of September 1, 2018 and a stated effective date of September 20, 2018. The tenant did not file to dispute the 10 Day Notice but left \$1,750.00 in cash for the landlord on September 21, 2018 and \$600.00 in cash was left for the landlord on October 31, 2018. The landlord did not issue any receipts for the cash payments but recorded them in the ledger which has been served upon the tenant.

The 1 Month Notice has a stated effective date of October 31, 2018 and indicates the reason for ending the tenancy is due to repeated late payment of rent. The tenant did not file to dispute the 1 Month Notice.

The landlord considered the tenancy to have ended on the later of the two dates on the Notices to End Tenancy served, or October 31, 2018, and after taking into account the tenant's payments described above, there was still a rental arrears of \$298.00 as of October 31, 2018.

The tenant continues to occupy the rental unit and has not paid anything since the payment of October 31, 2018.

The landlord seeks to regain possession of the rental unit as soon as possible. The landlord also seeks to recover the unpaid rent as of October 31, 2018 plus loss of rent for the months of November 2018 through February 2019 since the tenant continues to occupy the rental unit.

Documentary evidence provided for this proceeding includes the tenancy agreement; the 10 Day Notice; the 1 Month Notice; the tenant's ledger; and, registered mail receipt.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

The landlord issued two Notices to End Tenancy to the tenant on September 10, 2018 and both of the Notices were put in the door jamb of the rental unit. While the Notices were not affixed or attached to the door, I find I am satisfied the tenant received the

Notices based on the communication between the parties and the landlord observed the Notices were removed. Therefore, I deem the tenant to have been sufficiently served with the Notices pursuant to the authority afforded me under section 71 of the Act.

When a tenant receives a 10 Day Notice, the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

When a tenant receives a 1 Month Notice, the tenant has ten days to dispute the 1 Month Notice by filing an Application for Dispute Resolution. If a tenant does not dispute the 1 Month Notice, pursuant to section 47(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 1 Month Notice.

I find the tenant did not file an Application to dispute the 10 Day Notice or the 1 Month Notice. Nor, did the tenant pay the outstanding rent within five days of receiving the 10 Day Notice. Therefore, I find the tenant is conclusively presumed to have accepted this tenancy was coming to an end and was required to vacate the rental unit.

Since there were two different effective dates on the Notices served upon the tenant, I find the tenancy ended on the later date October 31, 2018 to give the tenant all the benefit of the two different dates. As the tenant continues to occupy the rental unit and has not paid any rent since October 31, 2018, I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, I find the landlord entitled to recover unpaid rent of \$298.00 that was outstanding as of October 31, 2018. Since the tenant remains in possession of the rental unit and did not vacate pursuant to the Notices to End Tenancy served upon him, I find the landlord entitled to recover loss of rent from the tenant for the months of November 2018 through February 2019 in the amount of \$740.00 per month.

I authorize the landlord to retain the tenant's security deposit of \$310.00 and accrued interest in the amount of \$10.98 in partial satisfaction of the rent owed to the landlord. I also award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid Rent: as of October 31, 2018	\$ 298.00
Loss of Rent: Nov 2018 – Feb 2019 (\$740.00 x 4)	2,960.00
Filing fee	100.00
Less: security deposit and accrued interest	<u>(320.98)</u>
Monetary Order	\$3,037.02

### Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is authorized to retain the tenant's security deposit and accrued interest and is provided a Monetary Order for the balance owing of \$3,037.02 to serve and enforce upon the tenant.

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 12, 2019

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Residential Tenancy Branch