



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding OCEAN PARK ENTERPRISES  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      Tenant: CNR CNC LRE OLC  
Landlord: OPC OPR MNR MNDC FF

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 17, 2023. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the Act).

The Landlord attended the hearing and provided affirmed testimony. However, the Tenant did not attend. The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that she no longer requires an order of possession and is only seeking monetary compensation for unpaid rent, as the Tenant moved out mid-march 2023.

Since the Tenant did not appear at this hearing, I dismiss all of the Tenant's applications in their entirety, without leave to reapply. Section 55 of the *Act* applies and states:

### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

**(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.**

[My emphasis added]

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Given the tenancy is already over, I find it is not necessary to issue an order of possession, pursuant to section 55 of the *Act*.

Next, I turn to section 55 (1.1) of the *Act*, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid 10 Day Notice was issued, and if the Tenant's application to cancel the 10 Day Notice is dismissed. This means the only remaining issue for this application is what amount of rent is owed. This will be addressed further below.

#### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?

#### Background and Evidence

The Landlord testified that rent in the amount of \$1,600.00 is due on the first of each month. The Landlord stated that she did not receive any rent for December 2022, January, February or March 2023, totalling 4 months of unpaid rent. The Landlord stated that the Tenant moved out suddenly on part way through March 2023.

The Landlord is seeking reimbursement for the unpaid rent in the amount of \$6,400.00.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I find there is insufficient evidence the Tenant had any right under the *Act* to withhold rent. I find there is sufficient evidence from the Landlord's testimony to demonstrate that the Tenant owes and has failed to pay \$6,400.00 in rent.

Pursuant to section 72 of the *Act*, I award the Landlord the recovery of the filing fee paid, \$100.00.

### Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$6,500.00**. This order must be served on the Tenant. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: April 21, 2023

---

Residential Tenancy Branch