



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, OPRM-DR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on September 19, 2018 (the "Application"). The Landlords sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 11, 2018. The Landlords also sought to recover unpaid rent and reimbursement for the filing fee.

The Agent attended the hearing for the Landlords. Nobody attended for the Tenant. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Landlords had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Landlords had submitted a letter stating that the hearing package was served on the Tenant in person on September 27, 2018. The letter states that the Tenant signed for these documents and that this has been submitted.

The Landlords submitted a page stating that the hearing package was received by the Tenant on September 27, 2018. There is a signature next to this which may be the Tenant's signature. This is also signed by the male Landlord as a witness.

The Agent testified that the evidence was included with the hearing package and served on the Tenant in person September 27, 2018.

Based on the undisputed testimony of the Agent, and the evidence submitted, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the “Act”). I also find the hearing package and evidence were served in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the Notice?
2. Are the Landlords entitled to a Monetary Order for unpaid rent?
3. Are the Landlords entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlords and Tenant in relation to the rental unit. The tenancy started June 1, 2018 and is for a fixed term ending June 1, 2019. Rent is \$850.00 plus utilities per month. The agreement does not state when rent is due. The Landlords submitted a letter stating that it was verbally agreed by both parties that the Tenant would pay rent on the first of each month. The Tenant paid a \$425.00 security deposit. The agreement is signed by the Landlords and Tenant.

The Agent advised that the Landlords are seeking to keep the security deposit towards unpaid rent.

The Notice states that the Tenant failed to pay \$1,400.00 that was due September 1, 2018. It also states that the Tenant failed to pay \$20.00 for utilities that was due August 1, 2018. The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated by one of the Landlords. It has an effective date of September 21, 2018.

A Proof of Service had been submitted as evidence and the Agent confirmed the information in it. It states that the Notice was served on the Tenant in person on September 11, 2018. The Proof of Service includes a witness statement from the female Landlord indicating she observed the male Landlord serve the Notice. The witness statement does not state what date the service occurred but is dated September 11, 2018 by the female Landlord.

The Agent testified that both pages of the Notice were served on the Tenant.

The Agent testified that the Tenant did not dispute the Notice. He testified that the Tenant did not have authority under the *Act* to withhold rent.

The Landlords had submitted a letter outlining the payments received from the Tenant for rent stating as follows. The Tenant paid \$300.00 rent for July. The Tenant paid August rent. The Tenant paid \$400.00 rent on September 14, 2018. The Tenant paid \$900.00 rent on October 3, 2018.

The Agent testified that the Tenant has not paid any rent since October 3, 2018. I confirmed the following summary with the Agent:

| Month     | Rent     | Paid                                   | Owing                                  |
|-----------|----------|--|--|
| July      | \$850.00 | \$300.00                               | \$550.00                               |
| August    | \$850.00 | \$650.00 + \$200.00                    | \$0.00                                 |
| September | \$850.00 | \$400.00 on September 14, 2018         | \$450.00                               |
| October   | \$850.00 | \$400.00 + \$500.00 on October 3, 2018 | Credit of \$50.00                      |
| November  | \$850.00 | \$0.00                                 | \$800.00 (with \$50.00 credit applied) |
|           |          | <b>TOTAL</b>                           | <b>\$1,800.00</b>                      |

The Landlords had submitted receipts confirming the above payments.

The Agent asked to amend the Application to reflect the full amount outstanding. The Agent confirmed the Landlords are not requesting compensation for unpaid utilities at this time.

## Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy where tenants have failed to pay rent. The relevant portions of section 46 state:

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

...

Based on the written tenancy agreement, and letter from the Landlords, I accept that the Tenant was obligated to pay \$850.00 rent by the first day of each month. I accept the undisputed testimony of the Agent that the Tenant did not have a right to withhold rent under the *Act*. Therefore, I find the Tenant was required to pay \$850.00 by the first of

each month for July and September under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I accept the outline of unpaid rent submitted and find the Tenant owed \$550.00 for July rent and \$850.00 for September rent as of September 1, 2018. I accept that these amounts had not been paid by September 11, 2018, when the Notice was issued. Given the Tenant failed to pay rent as required, the Landlords were entitled to serve her with the Notice pursuant to section 46(1) of the *Act*.

Based on the Proof of Service, and undisputed testimony of the Agent, I find the Tenant was served with the Notice in accordance with section 88(a) of the *Act*. Given the Notice was served on the Tenant in person, I find she received it September 11, 2018.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on September 11, 2018 to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of the Agent that the Tenant did not dispute the Notice. I also accept the evidence that the Tenant paid \$400.00 on September 14, 2018, within five days of receiving the Notice. However, the Tenant was required to pay the full amount outstanding in order to cancel the Notice under section 46(4)(a) of the *Act*. I find that the Tenant failed to do so.

Given the Tenant did not pay the full amount outstanding, or dispute the Notice, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended September 21, 2018, the effective date of the Notice. The Tenant was required under section 46(5)(b) of the *Act* to vacate the rental unit by September 21, 2018.

The Landlords are entitled to an Order of Possession. Pursuant to section 55(3) of the *Act*, I grant the Landlords an Order of Possession effective two days after service on the Tenant.

As noted, I accept the outline of the outstanding rent provided and find the Tenant currently owes \$1,800.00 in outstanding rent. I amend the Application to reflect this amount pursuant to section 4.2 of the Rules of Procedure. I find the Landlords are entitled to monetary compensation in the amount of \$1,800.00 for unpaid rent.

As the Landlords were successful in this application, I grant the Landlords \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

The Landlords are therefore entitled to monetary compensation in the amount of \$1,900.00. Pursuant to section 72(2) of the *Act*, the Landlords are permitted to keep the \$425.00 security deposit towards the outstanding rent. Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of \$1,375.00.

### Conclusion

The Landlords are entitled to an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlords are entitled to a Monetary Order in the amount of \$1,375.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and 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 *Act*.

Dated: November 07, 2018

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Residential Tenancy Branch