



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AZURA HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **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 Landlord on January 28, 2019 (the "Application"). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 21, 2019 (the "Notice"). The Landlord also sought to recover unpaid rent and reimbursement for the filing fee.

The Landlord filed an amendment to the Application dated February 04, 2019 changing the amount of the monetary claim and adding related claims (the "Amendment").

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

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

The Landlord had submitted registered mail receipts for the hearing package, evidence and Amendment. The Representative confirmed that the hearing package and evidence were sent to the Tenant at the rental unit by registered mail on February 04, 2019. Tracking Number 1 relates to this package. I looked this up on the Canada Post website which shows a notice card was left February 07, 2019.

The Representative confirmed the Amendment was sent to the Tenant at the rental unit by registered mail on February 07, 2019. Tracking Number 2 relates to this package. The Canada Post website shows a notice card was left in relation to this package on February 08, 2019.

Based on the undisputed testimony of the Representative, evidence submitted and Canada Post website information, I find the Tenant was served with the hearing package, evidence and Amendment in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "*Act*"). The Tenant is deemed to have received the packages pursuant to section 90 of the *Act*. I also find the packages 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 Representative was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Representative. I will only refer to the evidence I find relevant in this decision.

The Landlord sought the following compensation:

1. Unpaid rent for November of 2018 to February of 2019 (\$8,400.00 total)
2. Cost of sending registered mail for hearing (\$11.97)
3. Estimate of cleaning costs (\$1,000.00)

I told the Representative at the outset that parties are not entitled to reimbursement for the costs of preparing for these hearings and therefore I would not consider the request for the cost of sending registered mail.

I also advised the Representative that the application for cleaning costs is premature as the Tenant has until the end of the tenancy to clean the rental unit in accordance with the *Act*. This request is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

#### Issues to be Decided

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

#### Background and Evidence

The Representative testified as follows.

The Landlord purchased the rental unit in June of 2018. The Tenant was already living in the rental unit. He is unaware of whether the Tenant had a written or oral tenancy agreement with the previous owner. He spoke to the Tenant when the rental unit was purchased and the parties agreed the tenancy would continue on a month-to-month basis. The parties agreed rent would be \$2,100.00 per month due on the first day of each month. He is not aware of any deposits being paid.

The Tenant paid rent for July to October of 2018.

The Notice states that the Tenant failed to pay \$6,300.00 that was due January 01, 2019. The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Representative. It has an effective date of January 31, 2019.

The Representative testified that both pages of the Notice were posted to the door of the rental unit on January 21, 2019. The Landlord had submitted a proof of service in this regard. The proof of service is signed by a witness. The document states that the witness observed himself serve the Notice. The Representative confirmed this was a mistake and that he served the Notice which was witnessed by the witness noted on the proof of service.

The Representative confirmed the Tenant failed to pay rent for November and December of 2018 and January of 2019 and that this is what is reflected on the Notice. The Representative further testified that the Tenant failed to pay rent for February of 2019 and that \$8,400.00 is currently outstanding. The Landlord had submitted a rent ledger, invoices and copies of e-transfers from the Tenant in support of the outstanding rent.

The Representative testified that the Tenant has not paid any rent since the Notice was issued. The Representative was not aware of the Tenant disputing the Notice. The Representative testified that the Tenant did not have authority under the *Act* to withhold rent.

### 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 landlords to end a tenancy where a tenant has 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 undisputed testimony of the Representative, I accept that the Tenant was required to pay \$2,100.00 in rent per month by the first day of each month. I accept the undisputed testimony of the Representative that the Tenant did not have a right to withhold rent under the *Act*. I have no evidence before me that the Tenant did. I find the Tenant was required to pay \$2,100.00 in rent by the first of each month for November of 2018 to February of 2019 pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I accept the undisputed testimony of the Representative that the Tenant failed to pay rent for November of 2018 to January of 2019. This is supported by the evidence

submitted. I find the Tenant owed \$6,300.00 in rent as of January 21, 2019 when the Notice was issued.

Given the Tenant failed to pay rent as required, the Landlord was entitled to serve her with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Representative and proof of service submitted, I find the Tenant was served with the Notice in accordance with section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, I find the Tenant received the Notice January 24, 2019.

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 January 24, 2019 to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of the Representative that the Tenant did not dispute the Notice. I have no evidence before me that she did. I also accept the undisputed testimony of the Representative that the Tenant did not pay any of the outstanding rent after the Notice was issued.

Given the Tenant did not pay the outstanding rent 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 February 03, 2019, the corrected effective date of the Notice. The Tenant was required under section 46(5)(b) of the *Act* to vacate the rental unit by February 03, 2019.

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

I accept the undisputed testimony of the Representative that the Tenant has failed to pay rent for November of 2018 to February of 2019 and that \$8,400.00 is currently outstanding. I find the Landlord is entitled to monetary compensation in this amount.

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

The Landlord is therefore entitled to monetary compensation in the amount of \$8,500.00. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order in this amount.

### Conclusion

The Landlord is 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 Landlord is entitled to monetary compensation in the amount of \$8,500.00 and I issue the Landlord a Monetary Order in this amount. 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: February 26, 2019

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Residential Tenancy Branch