



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURY PLACE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      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 June 04, 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 May 08, 2019 (the "Notice"). The Landlord also sought to recover unpaid rent.

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

The Application named the Tenant and two other tenants. However, the tenancy agreement submitted shows that these other two individuals are minors and occupants, not tenants. Therefore, I have removed these two individuals from the style of cause.

The Landlord 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 Representative testified that the hearing package and evidence were sent to the Tenant at the rental unit by registered mail. The Landlord had submitted the customer receipt showing this. The customer receipt includes Tracking Number 1. I looked this up on the Canada Post website which shows the package was sent June 12, 2019. It shows the package was delivered and signed for by the Tenant on June 13, 2019.

Based on the undisputed testimony of the Representative, customer receipt and Canada Post website information, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential*

*Tenancy Act* (the “*Act*”). Based on the Canada Post website information, I find the Tenant received the hearing package and evidence June 13, 2019. I find the Tenant was served in sufficient time to allow her 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.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to recover unpaid rent?

### Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started August 29, 2016 and is a month-to-month tenancy. The Representative testified that rent is currently \$1,168.00 per month. Rent is due by the first day of each month. The Tenant paid a \$550.00 security deposit. The agreement is signed by the Tenant and for the Landlord.

The Representative sought to keep the security deposit towards unpaid rent.

The Notice states the Tenant failed to pay \$2,095.00 that was due May 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 May 18, 2019.

The Representative confirmed the Proof of Service submitted as evidence. It states that the Representative posted the Notice to the door of the rental unit May 08, 2019. It is signed by a witness. The Representative confirmed that both pages of the Notice were posted to the door.

The Representative testified that the Tenant did not pay \$877.00 of April rent, any of May rent or the late fees for April and May. She said this is what is reflected on the Notice.

The Representative testified that the Tenant has not paid any rent since the Notice was issued.

The Tenant did dispute the Notice in File Number 1. The hearing for this was June 28, 2019. Nobody attended the hearing for the Tenant or Landlord and the Tenant's Application for Dispute Resolution was dismissed with leave to re-apply. The decision did not extend any time limits set out in the *Act*.

The Representative testified that the Tenant did not have authority under the *Act* to withhold rent.

The Representative testified that currently \$4,381.00 in rent is outstanding including \$877.00 for April and \$1,168.00 for each of May, June and July. The Representative asked to amend the Application to seek the full amount outstanding.

### 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 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 undisputed testimony of the Representative and tenancy agreement submitted, I accept that the Tenant is obligated to pay \$1,168.00 in rent by the first day of each month. I accept the undisputed testimony of the Representative that the Tenant did not have authority under the *Act* to withhold rent. I have no evidence before me that she did. I find the Tenant was required to pay \$1,168.00 in rent for each of April and May by the first day of each month 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 did not pay \$877.00 of rent for April and any of May rent.

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* on May 08, 2019. Pursuant to section 90(c) of the *Act*, I find the Tenant received the Notice May 11, 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 May 11, 2019 to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of the Representative that the Tenant has not paid any rent since the Notice was issued.

The Tenant did dispute the Notice on May 15, 2019, within the five-day time limit. However, the Tenant did not appear at the hearing on June 28, 2019 and her Application for Dispute Resolution was dismissed. The Tenant did not seek a review of the decision. The Tenant was given leave to re-apply; however, I have no evidence

before me that the Tenant did re-apply. Further, the decision did not extend any time limits set out in the *Act* and therefore the Tenant would have been out of time to dispute the Notice. In these circumstances, I consider the Tenant to not have disputed the Notice within the time limit for doing so.

Given the Tenant did not pay the outstanding rent or dispute the Notice as required, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended May 21, 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 May 21, 2019.

The Landlord is entitled to an Order of Possession. Pursuant to section 55(3) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant. I acknowledge that I have issued the Landlord a Monetary Order for July rent. I find a two-day Order of Possession appropriate given rent is due on the first day of each month and given the date of this decision.

I accept the undisputed testimony of the Representative that the Tenant currently owes \$4,381.00 in unpaid rent for May, June, July and part of April. I amend the Application to reflect this amount pursuant to rule 4.2 of the Rules of Procedure. I find the Landlord is entitled to monetary compensation in this amount. Pursuant to section 72(2) of the *Act*, the Landlord is permitted to keep the security deposit towards the outstanding rent. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order in the amount of \$3,831.00.

### 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 \$4,381.00. The Landlord is permitted to keep the security deposit. I issue the Landlord a Monetary Order in the amount of \$3,831.00. 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: July 25, 2019

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Residential Tenancy Branch