



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

On June 19, 2019 the landlord applied for an Order of Possession and Monetary Order for unpaid rent under the Direct Request procedure. The landlord notified the tenant of her application by registered mail sent on June 19, 2019 and successfully delivered on June 20, 2019. On June 20, 2019 an Adjudicator reviewing the landlord's application ordered the matter be resolved by way of a participatory hearing given inconsistencies in the written tenancy agreement. The landlord served notice of the proceeding upon the tenant's adult son who resides with the tenant, in person, on or about June 25, 2019.

The landlord appeared for the hearing along with a translator. The tenant also appeared and confirmed her adult son informed her of the documents served by the landlord.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions.

Both parties confirmed that the outstanding rent has been paid along with rent for July 2019 and August 2019; however, the landlord confirmed that she still seeks to end the tenancy. Accordingly, it is not before me to determine whether the landlord is entitled to a Monetary Order for unpaid rent and the issue(s) for me to determine are whether the tenant has ended and the landlord's entitlement to an Order of Possession.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

It was undisputed that the tenancy started on August 1, 2018 and the tenant paid a security deposit of \$710.00. The tenant was required to pay rent of \$1,420.00 on the first day of every month. The rental unit is a 2 bedroom unit that the tenant shares with her adult son.

It was undisputed that on June 10, 2019 the landlord personally served the tenant's adult son with a 10 Day Notice to End Tenancy for Unpaid Rent indicating \$150.00 in rent was outstanding. The 10 Day Notice has a stated effective date of June 19, 2019.

The landlord testified that for the month of June 2019 the tenant paid \$850.00 on June 3, 2019 and \$420.00 on June 8, 2019, in cash, leaving a balance owing of \$150.00. The landlord testified that she received \$150.00 in cash in her mailbox on June 20, 2019. The landlord also received a cheque for July 2019 rent and a cheque for August 2019 rent a day or so after the first of those months. The landlord stated that the tenant was late paying rent most months.

The tenant testified that the landlord had required the tenant to pay in cash and the tenant was uncomfortable leaving cash in the landlord's mailbox which is why she often paid after the first day of the month. The tenant testified that she preferred to pay cash in person but she had difficulty getting the landlord in person.

The tenant acknowledged that she had did not pay the full amount of rent for June 2019 in early June 2019 all at once because she was experiencing financial difficulties but that June 2019 was the only month she had to make partial payments. The tenant testified that she actually paid \$900.00 on June 3, 2019 but she did not file to dispute the 10 Day Notice. The tenant acknowledged that the 10 Day Notice was served upon her adult son and that he telephoned her at work when he received it. The tenant confirmed that she does reside at the rental unit with her adult son.

Although the tenant was of the position she had paid \$900.00 on June 3, 2019 the tenant did pay \$150.00 to the landlord by depositing it in the landlord's mailbox on June 19, 2019 even though the landlord may have received it on June 20, 2019. The tenant was of the position the placed rent cheques in the landlord's mailbox on July 1, 2019 and August 1, 2019 although the landlord may not have received the cheques for a day or so later.

Both parties stated that when the \$150.00 was paid or received on June 19 or 20, 2019 when there was no discussion between the parties. The landlord was of the position the tenant only paid the shortfall after receiving the Notice of Dispute Resolution sent on July 19, 2019. The tenant testified that she had already paid the \$150.00 by the time the documents were received on June 20, 2019.

During the hearing, I provided the parties with my oral finding that the tenancy has ended and the landlord is entitled to an Order of Possession. The parties were agreeable to bringing the tenancy to an end by September 30, 2019 provided the tenant pays rent for September 2019 on September 1, 2019. The tenant requested the parties meet on September 1, 2019 at 10:00 a.m. so that the tenant may give the landlord a rent cheque and receive a receipt to prove the cheque was given and the landlord was agreeable to doing so. The tenant also requested a receipt for the cash payment of \$150.00 that she made in June 2019 for which she has yet to receive a receipt.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I was provided no evidence to suggest the tenant had a legal right to withhold rent that was due.

Where a tenant does not pay rent that is due, the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. 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.

I accept the unopposed evidence before me that the landlord personally served the tenant's adult son who resides with the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on June 10, 2019. Serving an adult person who apparently resides with the tenant is an acceptable method of serving a notice to end tenancy under section 88 of the Act.

Accordingly, I find the tenant had until June 15, 2019 to either pay the outstanding rent or file an Application for Dispute Resolution to dispute the 10 Day Notice. The tenant

did neither according to her own testimony. Therefore, I find the tenant was conclusively presumed to have accepted that the tenancy would end on the effective date of the 10 Day Notice.

With respect to the effective date of the 10 Day Notice, I find that it should have read June 20, 2019 and it automatically changes to comply with the Act pursuant to section 53.

Having heard tenant satisfied the rental arrears on June 19 or 20, 2019 and then paid rent for the months after the effective date of the 10 Day Notice by way of rent payments for July 2019 and August 2019, I proceed to consider whether the parties agreed to reinstate the tenancy. As provided under Residential Tenancy Policy Guideline 11: *Amendment and Withdrawal of Notices*, accepting rent after the effective date of a Notice to End Tenancy may be indicative of the parties agreeing to withdraw or waive a Notice to End Tenancy. In this case, the landlord served the tenant with Notice of this proceeding on June 25, 2019 and I find the tenant was duly notified that the landlord was seeking an Order of Possession when the tenant paid rent for July 2019 and August 2019. Also, I find it reasonable that the tenant would pay rent for July 2019 and August 2019 since this proceeding was set for hearing in mid-August 2019 and the landlord did not seek cancel this hearing. Therefore, I am satisfied the landlord did not act in such a way so as to indicate she would waive or withdraw the 10 Day Notice and reinstate the tenancy.

Based on the agreement of the parties during the hearing, I provide the following orders:

1. The landlord is provided an Order of Possession with an effective date of September 30, 2019 that may be served upon the tenant at any time.
2. An Order of Possession effective two (2) days after service that may be served upon the tenant only in the event the tenant fails to pay rent in full on September 1, 2019. Should the tenant present a cheque to the landlord, if the cheque is dishonoured the tenant shall be considered to have not paid rent when due and the landlord may serve the 2 day Order of Possession.
3. The parties shall meet at the landlord's front door at 10:00 a.m. on September 1, 2019 for purposes of the tenant giving the landlord the rent payment of \$1,420.00 and the landlord giving the tenant a receipt to acknowledge receipt of the payment, regardless of the method of payment.
4. The landlord shall provide to the tenant a receipt for the \$150.00 received in cash in June 2019 no later than September 1, 2019.

I further award the landlord recovery of the \$100.00 filing fee paid for this Application. The landlord is authorized to deduct \$100.00 from the tenant's security deposit to satisfy this award.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective on September 30, 2019. The landlord is also provided a conditional Order of Possession effective two (2) days after service that may be served and enforced only in the event the tenant fails to pay the full amount of rent on September 1, 2019.

I have issued other orders to the parties in this decision.

I have authorized the landlord to deduct \$100.00 from the tenant's security deposit to recover the filing fee paid for this application.

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: August 13, 2019

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Residential Tenancy Branch