



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DON DEVELOPMENT CONSTRUCTION COMPANY LTD.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      FFL OPRM-DR

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The landlord had applied by way of the Direct Request process which was referred to this participatory hearing.

An agent for the landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other.

No issues with respect to service or delivery of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

### Background and Evidence

**The landlord's agent** testified that she had taken over as manager of the rental apartment complex in May, 2019 and is not aware if any written agreement exists nor is she aware of when the tenancy began, however the tenant still resides in the rental unit. Rent in the amount of \$832.00 per month is payable on the 1<sup>st</sup> day of each month. The landlord's agent has no idea if or how much the landlord collected for a security deposit or pet damage deposit.

The tenant failed to pay rent when it was due for the month of June, 2019 and on July 5, 2019 the landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. Page 1 only of the 2-page notice has been provided as evidence for this hearing. The landlord's agent testified that 2 pages were served, but does not know what was on the 2<sup>nd</sup> page.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the notice, and has not paid any rent. Rental arrears have now accumulated to \$3,328.00. The tenant attended at the home of the landlord's agent to pay the rent, but the landlord's agent does not recall when, possibly on July 5, 2019. The tenant was told at that time that he would still have to vacate the rental unit.

**The tenant** testified that the landlord's evidentiary material shows that the Notice was served on June 5, 2019. On June 5 at 7:00 p.m. there was no Notice on the door, but the Notice was on the door when the tenant returned home later that evening.

On June 7, 2019 the tenant went to the home of the landlord's agent and had \$832.00 in an envelope. The landlord's agent said that the tenant was still being kicked out and had to leave and the Sheriff was coming.

Between then and July 5, 2019 the tenant saw the owner of the building who advised that it was the decision of the new manager, but if rent was paid it should be fine. The tenant again attended at the home of the landlord's agent, with cash, to advise her of that conversation with the owner. The landlord's agent refused to accept any rent for July.

The tenant tried twice to pay the rent, and the landlord's agent refused it and said that the reason for eviction is because of police attendance.

### Analysis

The *Residential Tenancy Act* is clear: once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent, in which case the Notice is of no effect. Also, a Notice served by posting it to the door of the rental unit is deemed to have been served 3 days after posting it. In this case, the landlord testified that the Notice was served a full month after it is dated. That may be an error on behalf of the landlord, but the onus is on the landlord to establish that it was given in accordance with the *Act*. I accept the undisputed testimony of the tenant that he attempted to pay the rent, but the landlord's agent, whether the money would have been accepted or not, told the tenant he still had to move out, which is contrary to the

law. By advising the tenant to pay the rent and move out, the landlord clearly has not satisfied me that the tenant failed to pay rent within 5 days of deemed service.

When issuing a notice to end a tenancy, it is important that the landlord serves all pages and provides copies of all pages of the Notice for a hearing because the *Act* requires that any such Notice be in the approved form. In the absence of the 2<sup>nd</sup> page, I cannot be satisfied that it was given in the approved form.

The landlord's application for an Order of Possession cannot succeed. I leave it to the parties to determine how much rent is owed and how it might be paid.

Since the landlord has not been successful with the application the landlord is not entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety.

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: September 27, 2019

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Residential Tenancy Branch