



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes OPR

### Introduction

This participatory hearing was scheduled for 1:30 p.m. on this date, via teleconference call, pursuant to a decision issued by an Arbitrator on October 7, 2019 in response to the landlord's application for an Order of Possession for unpaid rent made under the Direct Request procedure.

The landlord appeared for the hearing; however, there was no appearance on part of the tenants.

Since the tenants did not appear, I explored service of hearing documents upon the tenant. The landlord had been ordered to serve the tenants with a Notice of Hearing, the Interim Decision, and any other required document in a manner that complies with section 89 of the Act. The landlord submitted registered mail receipts, including tracking numbers, to prove he sent the hearing documents to the tenants on October 12, 2019. The registered mail notice cards were seen at the property by the landlord on October 19, 2019. The tenants have yet to pick up the registered mail. In addition to sending the documents by registered mail, the landlord also posted two hearing packages to the rental unit door on October 19, 2019 and he took a photograph of the packages taped to the door.

Section 90 deems a person to be in receipt of documents three days after they are posted to a door and five days after they are mailed, even if the person refuses to accept or pick up their mail. I was satisfied the landlord has met his burden to serve the tenants with notification of this proceeding and I deemed the tenants sufficiently served under section 90 of the Act. Therefore, I continued to hear this matter in the absence of the tenants.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The landlord testified that on January 15, 2017 the tenants signed a tenancy agreement for a tenancy set to commence January 15, 2017 for a fixed term of one year. The tenancy was then to continue on a month to month basis. The rent was set at \$1,350.00 due on the 15<sup>th</sup> day of every month. The landlord collected a security deposit of \$675.00 and a pet damage deposit of \$675.00.

The tenancy agreement that had been submitted as evidence was not signed by the tenants, which is the reason the landlord's application made under the Direct Request procedure was sent to a participatory hearing. The landlord explained to me that the copy provided as evidence is a digital copy of the tenancy agreement the landlord had presented to the tenants for their signature and the tenants had signed a copy of the tenancy agreement on January 15, 2017 in front of the landlord's wife and son. However, the signed copy was misfiled or misplaced and the landlord cannot locate it. The landlord confirmed that the copy of the tenancy agreement signed by the tenants reflects the same terms as seen in the copy of the tenancy agreement submitted as evidence.

The landlord submitted that the tenants failed to pay the rent that was due on August 15, 2019. The landlord personally served the male tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on August 31, 2019. The 10 Day Notice has a stated effective date of September 10, 2019 and indicates \$1,350.00 was outstanding as of August 15, 2019. The landlord received the outstanding rent by way of an e-transfer on September 6, 2019. The landlord testified that he communicated to the tenant that he would not be continuing the tenancy. The landlord stated the tenants did not pay any rent after the payment was made on September 6, 2019 and continue to hold possession of the rental unit.

### 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.

Where a tenant does not pay rent 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 tenants were required to pay rent of \$1,350.00 on August 15, 2019 and they failed to do so, putting the landlord in a position to serve the tenants with a 10 Day Notice. I also accept that the landlord personally served the tenants with a 10 Day Notice on August 31, 2019 and the tenants did not pay the outstanding rent or file an Application for Dispute Resolution to dispute the 10 Day Notice within five days. I further find that in paying the outstanding rent on September 6, 2019 the tenants were beyond the time limit to nullify the 10 Day Notice. Accordingly, I find the tenants to be "conclusively presumed" to have accepted that the tenancy would end on September 10, 2019 and they were required to vacate the rental unit by that date.

Since the tenants have not yet returned possession of the rental unit to the landlord and there is no evidence to suggest the tenancy was reinstated, I find the landlord entitled to an Order of Possession as requested.

Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenants.

Conclusion

The landlord is provided an order of Possession effective two (2) days after service upon the tenants.

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: November 07, 2019

---

Residential Tenancy Branch