



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL OPRM-DR

### Introduction

This hearing was scheduled to deal with the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord (SG) and the tenant (DC) attended via conference call hearing. Both were given a full opportunity to be heard, to present sworn testimony, to make submissions.

This application was originally submitted via Direct Request process that was reconvened to a participatory hearing.

I have reviewed all the evidentiary material of both parties submitted for this hearing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in the decision.

The landlord provided a copy of a standard form tenancy agreement to the tenant to sign (which the landlord entered into evidence). However, the tenant refused to sign the agreement. The tenant moved into the rental unit on January 1, 2019. The tenant paid a monthly rent of \$1050.00 which is payable on the first of each month. She paid a security deposit of \$525.00 to the landlord in Trust.

On August 19, 2019, the landlord served the tenant with a 10 Day Notice to End Tenancy (the "Notice") by posting it on the door. The Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of August 29, 2019.

The landlord testified that she was "stressed" with the lack of communication from the tenant and was of the opinion that all verbal and mutual negotiations with the tenant had failed. The landlord testified that the monthly rent since the commencement of the tenancy had been paid in intermittent payments.

The landlord testified that the tenant was currently in arrears with one months rent amounting to \$1050.00. There was some discussion between the parties as to the arrears, landlord testified that the arrears related to August rent payments, whilst the tenant testified that the arrears were applied to the to the November rent payment. In any event, the parties agree that the tenant is in arrears of \$1050.00 at the time of the hearing.

The tenant testified due to personal issues and injury to her arm, she was unable to pay the rent on time. Tenant testified that she has returned to full time employment and had paid the arrears for August, September and October 2019 and would agree to pay November's rent on November 28, 2019.

The Tenant testified that she did not wish to move out of the rental unit and the effective dates suggested by the landlord of a further ten days would not give her sufficient time to move out of the rental unit. The tenant testified she believed the tenancy was not a valid tenancy agreement as it was in writing and not signed by both parties. I informed the parties at the hearing that the tenancy was a contract by inferred conduct of the parties.

During the hearing, the landlord agreed to extend the effective date of the 10-day notice to December 31, 2019 but this was rejected by the tenant who stated that she required additional time to find another rental unit.

### Analysis

At the hearing, the tenant discussed the legal effect of the lack of a signature on a tenancy agreement, she argued that as the agreement was not signed, it was not valid. The landlord testified that she had requested the tenant to sign the tenancy at the commencement, but the tenant refused to do so.

Section 1 of the *Act*; defines a tenancy agreement;  
*“an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and includes a licence to occupy a rental unit;”*

I find there can still be a binding enforceable oral tenancy agreement, the terms of which can be inferred by conduct. Both parties established a contractual relationship and consideration was given in the form of rent payments.

### **Tenancy agreements include the standard terms**

**12** The standard terms are terms of every tenancy agreement

- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
- (b) whether or not the tenancy agreement is in writing.

I find that there is a valid tenancy under section 12 of the *Act*. The landlord and tenant have inferred a tenancy by conduct of the parties. The tenant has paid specific amounts of rent due, and the landlord has accepted consideration in the form of rent payments creating a contractual relationship.

I find that the landlord served the 10-day Notice on August 19, 2019. Pursuant to section 46 of the *Act*. The “Notice” provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice, August 29, 2019.

Section 46(2) requires that the Notice meet the form and content requires of section 52 which state:

**Form and content of notice to end tenancy:**

**52** In order to be effective, a **notice to end** a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (e) when given by a landlord, be in the approved form.

I have reviewed the "Notice" to ensure landlord has complied with the requirements as to form and content of section 52 of the *Act*. I am satisfied as to the validity of the "Notice" and confirming force and effect.

**Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

Section 46(5) is mandatory, and I do not have discretion as to its application. Based on parties' testimony I find the tenant did not pay the rent in full in the required time nor did tenant file an application to dispute the notice within 5 days.

Therefore, the tenant is **conclusively presumed** to have accepted that the tenancy ends on the effective date of the 10-day Notice (August 29, 2019) and must move out of the rental unit. As this has not occurred, I find that the landlord is entitled to an order of possession effective December 31, 2019, pursuant to section 55 of the Act.

During the proceeding, the landlord requested a monetary sum of \$200.00 for the Shaw bill outstanding by the tenant. This amount does not form part of the monthly rent, as such, I can not order its return.

The landlord having been successful in her claim is also entitled to recover the \$100.00 filing fee pursuant to section 72.

Conclusion

I find that the landlord is entitled to a monetary order for the sum of \$1050.00 pursuant to section 67 of the *Act* and I award the landlord the sum of \$100.00 for the filing fee.

I grant an order of possession to the landlord effective December 31, 2019 at 1:00 p.m. I order that the landlord serve a copy of this decision and attached order of possession on the tenant immediately upon its receipt, in accordance with section 88 of the Act.

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: December 03, 2019

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Residential Tenancy Branch