



# 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 convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on October 22, 2019 (the “Application”). The Landlords applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 21, 2019 (the “Notice”);
- To recover unpaid rent; and
- Reimbursement for the filing fee.

The Landlords attended the hearing. The Tenant did not attend the hearing.

At the outset, the Landlord sought to adjourn the hearing for two months as the parties are working towards resolving the issues raised. I told the Landlord I would not adjourn the hearing for two months given the date of the Notice and, at that point, the Notice would be six months old. I told the Landlord he could withdraw the Application or proceed. I told the Landlord that, if I issued an Order of Possession, it would be up to him whether he wanted to enforce it or not. The Landlord chose to proceed with the hearing.

I explained the hearing process to the Landlords who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence. The Landlord testified that the hearing package and evidence were served on the Tenant in person November 09, 2019.

Based on the undisputed testimony of the Landlord, I accept that the Tenant was served with the hearing package and evidence in accordance with sections 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the “Act”). I also find the Tenant received the hearing package and evidence in sufficient time 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 Landlords were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the Landlords. 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?
3. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence. The rental unit address is different on the tenancy agreement and Application. The Landlord testified that there is a typo in the tenancy agreement and the correct address is on the Application. The tenancy started June 01, 2019 and is a month-to-month tenancy. Rent is \$1,450.00 per month due on the first day of each month. The agreement is signed by the Landlords and Tenant.

The Notice states that the Tenant failed to pay \$1,450.00 in rent due September 01, 2019. The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of October 01, 2019.

The Landlords submitted a Proof of Service stating that the Landlord served the Notice on the Tenant in person September 21, 2019. The Proof of Service is signed by the Tenant. The Landlord confirmed the accuracy of the Proof of Service. The Landlord confirmed both pages of the Notice were served on the Tenant.

The Landlord testified that the Notice reflects outstanding rent for September. The Landlord testified that the Tenant had failed to pay \$30.00 of August rent and September rent when the Notice was issued.

The Landlord testified that the Tenant paid \$1,100.00 of outstanding rent on September 25, 2019. The Landlord testified that the next rent payment received was received in October. The Landlord testified that he has issued receipts indicating payments are for use and occupancy only.

I asked the Landlord to outline what rent payments the Tenant made after the Notice was issued and when. The Landlord provided an outline. The Landlord later changed his testimony on what payments were made when. The Landlord had not submitted any documentary evidence of what payments were made when, other than a statement signed by the Tenant indicating she owed \$1,830.00 in rent as of October 07, 2019.

The Landlord testified that he is not aware of the Tenant disputing the Notice.

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

The Landlord testified that \$1,800.00 in rent is currently outstanding.

### Analysis

Section 26(1) of the *Residential Tenancy Act* (the "*Act*") requires a tenant 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 a landlord to end a tenancy when a tenant fails 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 written tenancy agreement and undisputed testimony of the Landlord, I accept that the Tenant is required to pay \$1,450.00 in rent by the first day of each month pursuant to the tenancy agreement. Based on the undisputed testimony of the Landlord, I accept that the Tenant did not have authority under the *Act* to withhold rent for September. Therefore, I find the Tenant was required to pay \$1,450.00 in rent by September 01, 2019 for September rent under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of the Landlord and in part on the written statement signed by the Tenant submitted, I accept that the Tenant did not pay September rent by September 21, 2019. Given the Tenant failed to pay rent as required, the Landlords were entitled to serve her with the Notice pursuant to section 46(1) of the *Act*.

Based on the Proof of Service and undisputed testimony of the Landlord, I accept that both pages of the Notice were served on the Tenant in person September 21, 2019. I find the Notice was served in accordance with section 88(a) of the *Act*. Given the Notice was served in person, I find the Tenant received it September 21, 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 September 21, 2019 to pay the outstanding rent in full or dispute it under section 46(4) of the *Act*.

Based on the undisputed testimony of the Landlord and in part on the written statement signed by the Tenant submitted, I accept that the Tenant paid \$1,100.00 of the outstanding rent on September 25, 2019. This was not sufficient to cancel the Notice pursuant to section 46(4) of the *Act* as the Tenant was required to pay the full amount outstanding.

I accept that the Tenant did not dispute the Notice. The Landlord was not aware of the Tenant disputing the Notice. I have no evidence before me that the Tenant did.

Given the Tenant did not pay the full amount outstanding or dispute the Notice within five days of receiving it, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended October 01, 2019, the effective date of the Notice. The Tenant was required under section 46(5)(b) of the *Act* to vacate the rental unit by October 01, 2019.

I acknowledge that the Landlord has accepted further payments from the Tenant; however, I accept that the Landlord has issued receipts indicating these are for use and occupancy only based on his undisputed testimony on this point. I accept that the tenancy has not been reinstated at this point.

The Landlord is entitled to an Order of Possession and I issue this pursuant to section 55 of the *Act*.

In relation to the request for a monetary order, I did not find the Landlord's testimony on what payments have been made reliable as his testimony changed during the hearing. The Landlord did not submit documentary evidence showing the payments made despite his testimony that receipts have been issued. In the circumstances, I am not satisfied the Landlord has proven that he is entitled to a monetary order in the amount of \$1,800.00. I dismiss this claim with leave to re-apply. This does not extend any time limits set out in the *Act*.

As the Landlord was partially successful in this application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. I issue the Landlord a Monetary Order in this amount.

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 a Monetary Order in the amount of \$100.00. 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: December 20, 2019

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Residential Tenancy Branch