



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL OPR-DR

### Introduction

This hearing was scheduled to convene at 11:00 a.m. this date by way of conference call concerning an application made by the landlords seeking an Order of Possession for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The landlords had originally made the application via the Direct Request process, which is a process seeking an order without an oral hearing. That application was considered by an Adjudicator, who adjourned the Direct Request application to this participatory hearing and provided an Interim Decision. The Interim Decision requires the landlords to serve the tenant with a Notice of Reconvened Hearing, the Interim Decision and all other required documents to the tenant in accordance with Section 89 of the *Residential Tenancy Act* within 3 days of receiving the Interim Decision. The Interim Decision is dated November 1, 2019.

Both landlords attended the hearing and one gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord testified that the tenant was served with the application, Interim Decision and notice of this hearing by registered mail on November 8, 2019 and has provided a copy of a Canada Post cash register receipt bearing that date and a tracking number. I find that the tenant has been served in accordance with the *Residential Tenancy Act* and order of the director.

All evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that this fixed term tenancy began on May 20, 2016 according to the tenancy agreement, however the tenant actually moved into the rental unit on May 1, 2016. The tenancy continued on a month-to-month basis after the 2-year fixed term which expired on June 20, 2018. The landlord believes the tenant still resides in the rental unit but has not responded to the landlords for some time.

Rent in the amount of \$1,600.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$800.00 which is still held in trust by the landlords and no pet damage deposit was collected. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant did not pay rent for August, 2019, and the landlords live in a different community than the rental unit, but visited the tenant in August, 2019 in an attempt to settle the unpaid rent with the tenant. The tenant still owed the landlords \$800.00 for half of May, 2016 rent. The tenant said she would pay and mentioned that she would get a roommate to ensure rent would be paid on time.

However, no rent was ever paid for August and no rent has been paid since. The landlords served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail on October 12, 2019, and a copy of the Notice has been provided as evidence for this hearing. It is dated October 12, 2019 and contains an effective date of vacancy of October 22, 2019 for unpaid rent in the amount of \$4,600.00 that was due on October 1, 2019. The landlords have also provided copies of the Canada Post cash register receipt with a tracking number dated October 12, 2019 and an envelope showing that the registered mail was returned to the landlords unclaimed by tenant.

The tenant has not paid any rent and has not served the landlords with an Application for Dispute Resolution disputing the Notice to end the tenancy.

The landlords seek an Order of Possession as well as a monetary order in the amount of \$8,800.00 for unpaid rent and recovery of the \$100.00 filing fee.

### Analysis

The *Residential Tenancy Act* permits service of a notice to end a tenancy by registered mail which is deemed to have been served 5 days later. In this case, I accept the testimony of the landlord that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) was served to the tenant in that manner on October 12, 2019, which is deemed to have been served on October 17, 2019.

The *Act* also specifies that once served with such a Notice, the tenant has 5 days to pay the rent, in which case the Notice is of no effect, or dispute the Notice within that 5 day period by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, I accept the undisputed testimony of the landlord that the tenant did not pay the rent and arrears have accumulated. The landlord also testified that the landlords have not been served with an Application for Dispute Resolution by the tenant, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy.

I have reviewed the Notice and I find that it is in the approved form, and I find that the landlords are entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

With respect to the monetary order sought by the landlords, the landlords have not applied for monetary compensation in the Application for Dispute Resolution, however the *Act* specifies that I may grant an order requiring payment of the rent if the landlord's application for an Order of Possession is in relation to the non-payment of rent, and I find that it is.

I accept that the tenant owes rent for the months of August to December, 2019 inclusive, for a total of \$8,000.00 (5 x \$1,600.00 = \$8,000.00). However, the landlord testified that the tenant moved in earlier than the commencement date contained in the tenancy agreement and didn't pay full rent for the first month of the tenancy. Considering that the evidence shows a commencement date of May 20, 2016, I am not satisfied that the landlords have established any rent owed for the first month.

Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlords as against the tenant in the amount of \$8,100.00.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$8,100.00.

This order is final and binding and may be enforced.

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 20, 2019

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Residential Tenancy Branch