



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

On December 3, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting an order of possession for the rental unit based on issuance of a Two Month Notice to End Tenancy for Landlords Use of Property, and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord also applied for a monetary order for unpaid rent or utilities.

The matter was set for a conference call hearing. The Landlord and Tenant attended the conference call hearing.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

The parties confirmed that they have exchanged the documentary evidence that I have before me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to an order of possession for the rental unit based on a Two Month Notice to End Tenancy for Landlords Use of Property?
- Is the Landlord entitled to an order of possession for the rental unit based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?
- Is the Landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began approximately five or six years ago and is on a month to month basis. Rent in the amount of \$500.00 is to be paid to the Landlord by the first day of each month.

The Landlord issued two different notices to end tenancy to the Tenant.

- The Landlord testified that she issued a Two Month Notice to End Tenancy for Landlords use of Property (“the Two Month Notice”) in person to the Tenants on October 31, 2019.
- The Landlord testified that she issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 10, 2019 to the Tenant.

The Two Month Notice indicates that the rental unit will be occupied by the Landlord or the Landlords close family member. The Two Month Notice has an effective date of December 31, 2019.

The Two Month Notice provides information on the rights of a Tenant. At the top of the form the Notice provides: “This is a legal notice that could lead to you being evicted from your home.” The Notice informs the Tenant of the right to dispute the Notice within 15 days after receiving it. The Notice informs the Tenant that if an application to dispute the Notice is not filed within 15 days, the Tenants are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the Notice.

The Tenant testified that he received the Two Month Notice on October 31, 2019. He testified that he did not dispute the Two Month Notice.

The Tenant testified that he has not moved out of the rental unit by the effective date of the Two Month Notice because he reached an agreement with the Landlord to remain in the rental unit for an additional month.

The Landlord provided testimony confirming that the parties reached an agreement for the Tenant to stay an additional month. The Landlord requested an order of possession for the rental unit and the Tenant did not oppose the issuance of an order of possession to the Landlord effective January 31, 2020.

The Landlord is seeking a monetary order for unpaid rent in the amount of \$1,000.00 for unpaid November and December 2019 rent. The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement.

The Tenant testified that he did not pay the rent owing under the tenancy agreement for the months of November and December 2019.

The Tenant testified that he was frustrated with the Landlords failure to complete repairs to the rental unit and the Tenant also suggested that there was an illegal rent increase applied five years prior.

### Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 55 (2) of the Act provides that a Landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

*(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant received the Two Month Notice on October 31, 2019 and did not dispute the notice.

I find that the Tenant is conclusively presumed under section 49(9) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Section 55 of the Act provides that a Landlord may request an order of possession of a rental unit when a notice to end tenancy is given by a Landlord and the Tenant has not disputed the Notice and the time for making that application has expired.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective at 1:00 pm on January 31, 2020, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant failed to pay the rent due under the tenancy agreement for the months of November and December 2019. I find that the Tenant did not have a legal right to withhold payment of the rent. I find that the Tenant owes the Landlord the amount of \$1,000.00 for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I grant the Landlord a monetary order in the amount of \$1,100.00.

Since the tenancy has ended based on issuance of a Two Month Notice, there is no need to consider whether or not the tenancy is ending based on issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

### Conclusion

The Tenant received the Two Month Notice and did not file to dispute the Two Month Notice. The Tenant is conclusively presumed under the legislation to have accepted that the tenancy has ended.

The Landlord is granted an order of possession effective no later than 1:00 pm on January 31, 2020 after service on the Tenant.

The Landlord is granted a monetary order for unpaid rent and recovery of the filing fee in the amount of \$1,100.00.

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: January 27, 2020

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Residential Tenancy Branch