



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, OPR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on February 05, 2020 (the "Application"). The Landlord applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and reimbursement for the filing fee.

The Landlord filed an amendment dated February 07, 2020 adding a monetary claim for \$3,300.00 for unpaid rent and seeking to hold the security deposit towards unpaid rent.

The Agent for the Landlord attended the hearing. Nobody attended the hearing for the Tenants. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package, amendment and Landlord's evidence.

The Agent testified that hearing packages, the amendment and the Landlord's evidence were sent to the Tenants by registered mail to the rental unit on February 07, 2020. The Landlord had submitted customer receipts for these with Tracking Numbers 1 and 2 on them. I looked these up on the Canada Post website which shows notice cards were left for the packages February 10, 2020.

Based on the undisputed testimony of the Agent, customer receipts and Canada Post website information, I find the Tenants were served with the hearing package, amendment and Landlord's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Pursuant to section 90(a) of the *Act*, the

Tenants are deemed to have received the packages February 12, 2020. I am satisfied the Tenants were served 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 Tenants. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the Agent. 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 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to hold the security deposit towards unpaid rent?
4. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started April 01, 2019 and is a month-to-month tenancy. Rent is \$1,800.00 per month due on the first day of each month. The Tenants paid a \$900.00 security deposit. The agreement is signed by an agent for the Landlord and the Tenants.

The Landlord submitted three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. I have not considered the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 04, 2000 as the Agent said it was served on the Tenants for the first time with the hearing package for this matter.

The first 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dated December 14, 2019 (the "December 10 Day Notice"). It states that the Tenants failed to pay \$2,200.00 in rent that was due December 01, 2019. It is addressed to the Tenants and refers to the rental unit. It is signed and dated by the Agent. It has an effective date of December 29, 2019.

The second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dated January 21, 2000 (the "January 10 Day Notice"). It states that the Tenants failed to pay \$3,300.00 in rent that was due January 01, 2000. It is addressed to the Tenants and

refers to the rental unit. It is signed and dated by the Agent. It has an effective date of January 31, 2000.

The Agent testified that he served both pages of both 10 Day Notices on Tenant S.S. in person. The Agent testified that he served the December 10 Day Notice on December 14, 2019 and the January 10 Day Notice on January 19, 2020.

The Agent testified that Tenant S.S. stopped paying rent in November of 2019. The Agent testified that Tenant A.C. made the following payments:

- \$700.00 November 02, 2019
- \$700.00 December 01, 2019
- \$700.00 January 04, 2020
- \$700.00 February 01, 2020

The Agent testified that no further rent payments have been made. The Agent confirmed the Tenants are co-tenants and both responsible for the full rent payment each month. The Agent confirmed \$4,400.00 in rent was outstanding as of the date of the hearing. The Agent sought to amend the Application to reflect the full amount outstanding.

The Agent testified that the Tenants did not dispute the 10 Day Notices. The Agent testified that the Tenants did not have authority under the *Act* to withhold rent.

The Agent sought an Order of Possession effective March 15, 2020.

### Analysis

I note at the outset that based on the undisputed testimony of the Agent, and written tenancy agreement, I find the Tenants are co-tenants under the same tenancy agreement. Pursuant to Policy Guideline 13, the Tenants are “jointly responsible for meeting the terms of the tenancy agreement” and “are jointly and severally liable for any debts or damages relating to the tenancy.”

Section 26(1) of the *Act* requires tenants 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 where tenants have failed 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 undisputed testimony of the Agent and written tenancy agreement, I am satisfied the Tenants were required to pay \$1,800.00 in rent by the first day of each month. Based on the undisputed testimony of the Agent, I am satisfied the Tenants did not have authority under the *Act* to withhold rent for the months of November to February. There is no evidence before me that the Tenants did. I find the Tenants were required to pay \$1,800.00 by the first day of each month for November to February 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 Agent, I am satisfied the Tenants failed to pay \$1,100.00 of the rent each month from November to February. Given the Tenants failed

to pay rent as required, the Landlord was entitled to serve them with the 10 Day Notices pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Agent, I accept that the 10 Day Notices were served on Tenant S.S. in accordance with section 88(a) of the *Act*. Based on the undisputed testimony of the Agent, I accept that the December 10 Day Notice was served on December 14, 2019 and the January 10 Day Notice on January 19, 2020.

I have reviewed the 10 Day Notices and find they comply with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*. I note that the January 10 Day Notice shows the year as 2000 rather than 2020. The Tenants would have known the correct year and I do not find that these errors invalidate the January 10 Day Notice.

The Tenants had five days from receipt of the 10 Day Notices on December 14, 2019 and January 19, 2020 to pay the outstanding rent or dispute the notice under section 46(4) of the *Act*. I am satisfied based on the undisputed testimony of the Agent that the Tenants did not dispute the 10 Day Notices. There is no evidence before me that the Tenants did.

I am also satisfied based on the undisputed testimony of the Agent that the Tenants did not pay the outstanding rent within five days of receiving the 10 Day Notices.

Given the Tenants did not pay the outstanding rent or dispute the 10 Day Notices by December 19, 2019 and January 24, 2020 respectively, I find pursuant to section 46(5)(a) of the *Act* that the Tenants are conclusively presumed to have accepted that the tenancy ended December 29, 2019, the effective date of the December 10 Day Notice. The Tenants were required under section 46(5)(b) of the *Act* to vacate the rental unit by December 29, 2019.

The Landlord is entitled to an Order of Possession. Pursuant to section 55 of the *Act*, I issue the Landlord an Order of Possession effective at 1:00 p.m. on March 15, 2020.

As stated, I am satisfied the Tenants failed to pay \$1,100.00 of the rent each month from November to February. I have also accepted that the Tenants did not have authority under the *Act* to withhold rent. I am satisfied \$4,400.00 in rent was outstanding as of the date of the hearing. I allow the Landlord to amend the Application to reflect this amount pursuant to rule 4.2 of the Rules of Procedure. The Landlord is entitled to recover \$4,400.00 in unpaid rent.

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

Pursuant to section 72(2) of the *Act*, the Landlord can keep the \$900.00 security deposit towards unpaid rent. The Landlord is issued a Monetary Order for the remaining \$3,600.00 pursuant to section 67 of the *Act*.

### Conclusion

The Landlord is entitled to an Order of Possession effective at 1:00 p.m. on March 15, 2020. This Order must be served on the Tenants and, if the Tenants do 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 \$4,500.00 for unpaid rent and the filing fee. The Landlord can keep the \$900.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$3,600.00. This Order must be served on the Tenants and, if the Tenants do 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: March 02, 2020

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Residential Tenancy Branch