



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL, OPM, MNRL, OPR**

### Introduction

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

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- An Order of Possession for a Mutual Agreement to End Tenancy pursuant to section 55;
- A monetary order for rent pursuant to section 67; and
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:30 a.m. to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he sent the Notice of Dispute Resolution Proceedings package to the tenant at her residential address by registered mail on February 10, 2020. The tracking number for the mailing is recorded on the cover page of this decision. I find the tenant to be deemed served with the Notice of Dispute Resolution Proceedings package five days after mailing, on February 15, 2020 pursuant to sections 89 and 90 of the Act.

### Preliminary Issue

The landlord WL testified that he is the brother of RSL, the owner of the rental unit. He has full, legal power of attorney over his brother's affairs and has full authority to administer the brother's rental unit. The tenancy agreement was between his brother

and the tenant, however since his brother is incapacitated, WL commenced the Application for Dispute Resolution. WL testified that both his name and his brother's name should appear as landlords in this decision, and I amended the application to show both brothers' names in accordance with section 64(3) of the Act. Throughout this decision, WL is referred to as the landlord.

#### Issue(s) to be Decided

Should the landlord be granted an Order of Possession?

Is the landlord entitled to a monetary order for outstanding rent?

Can the filing fee be recovered?

#### Background and Evidence

The landlord provided the following undisputed testimony. He does not know when the tenancy began and no tenancy agreement was signed. Rent for the unit was set at \$1,200.00 per month payable on the first day of the month.

In December of 2019, the landlord received \$800.00 of the December rent. On December 12, 2019, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally serving a person who apparently lived with the tenant at the rental unit. The Notice states the tenant failed to pay rent in the amount of \$400.00 that was due on December 1, 2019. The Notice states an effective date of December 22, 2019.

The tenant did not file for dispute resolution or pay the outstanding rent within five days of receiving the Notice. On January 1, 2020, the landlord went to the tenant's rental unit and together they signed a mutual agreement to end tenancy. The agreement states the tenant agrees to vacate the premises at 12:00 p.m. on January 31, 2020.

The landlord testified the tenant has not vacated the unit, as far as he is aware although he has not gone there to be sure. The tenant has failed to pay arrears in rent for December (\$400.00), or rent for January, February, March or April 2020.

#### Analysis

I find the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 12, 2019 when it was personally served to a person who apparently resided with the tenant in accordance with sections 88 and 90 of the Act.

Section 46 of the Act states:

(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.

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 22, 2019. As that has not occurred, I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants.

Section 26 of the *Act* is clear, 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.

I find the tenant did not have any right to deduct any portion of the rent and that she has failed to pay rent. Based on the landlord's undisputed testimony, I am satisfied the tenant failed to pay arrears in rent for the month of December of \$400.00 and the \$1,200.00 rent from January 1 to January 31 the end date on the mutual agreement to end tenancy. I award the landlord **\$1,600.00** in compensation.

The landlord testified that he does not know if the tenant has vacated the rental unit anytime after the effective date noted on the mutual agreement to end tenancy. As such, I am not satisfied the landlord is entitled to rent for the months of February, March or April as I have insufficient evidence to corroborate this claim. This portion of the landlord's application is dismissed.

As the landlord was successful in his application, the **\$100.00** filing fee will be recovered from the tenant.

Conclusion

I find the landlord is entitled to an Order of Possession, effective **two days after service on the tenant**.

The landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,700.00**.

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: April 16, 2020

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Residential Tenancy Branch