



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-DR, OPR-DR, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 20, 2020 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 25, 2020 (the “Notice”);
- To recover unpaid rent; and
- For reimbursement for the filing fee.

This matter proceeded through the direct request process but was adjourned to a participatory hearing given information missing in the documentation submitted.

The Agent attended the hearing for the Landlord. Nobody attended the hearing for the Tenant. The Agent confirmed the correct name of the Landlord which is reflected in the style of cause. 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 Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that the hearing package and evidence were sent by registered mail to the rental unit on April 06, 2020. The Agent confirmed Tracking Number 1 relates to this. The Landlord had submitted the customer receipt with Tracking Number 1 on it as evidence. I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered April 07, 2020.

Based on the undisputed testimony of the Agent, customer receipt and Canada Post website information, I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”) and rule 3.1 of the Rules of Procedure (the “Rules”). Based on the Canada Post website information, I am satisfied the package was delivered April 07, 2020, in sufficient time to allow the Tenant 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 Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all 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 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 Agent confirmed this relates to the rental unit. The tenancy started October 01, 2017 and was for a fixed term ending March 31, 2018. The Agent confirmed the tenancy then became a month-to-month tenancy. The Agent testified that rent is \$760.00 per month. Rent is due on or before the first day of each month. The Tenant paid a \$513.50 security deposit. The Agent confirmed the Landlord is seeking to keep the security deposit towards unpaid rent.

The Notice states that the Tenant failed to pay \$2,541.66 + \$75 NSF that was due February 01, 2020. The Notice is addressed to the Tenant and refers to the rental unit. The copy submitted is not signed or dated. However, the Agent testified that the copy served on the Tenant was signed and dated February 25, 2020. The Notice has an effective date of March 12, 2020.

The Agent testified that both pages of the Notice were sent by registered mail to the rental unit on February 25, 2020. The Agent confirmed Tracking Number 2 relates to this. The Landlord had submitted the customer receipt with Tracking Number 2 on it as

evidence. I looked Tracking Number 2 up on the Canada Post website which shows the package was unclaimed and returned to the sender. The website shows notice cards were left February 26, 2020 and March 03, 2020.

The Agent confirmed the rent ledger submitted and testified that the Tenant failed to pay \$253.33 of May rent and all of September and October rent in 2019. The Agent testified that the Tenant failed to pay rent for February of 2020. The Agent confirmed \$2,533.33 in rent was outstanding when the Notice was issued.

The Agent testified that the Tenant has not paid any rent since the Notice was issued. The Agent confirmed \$4,813.33 in rent is currently outstanding.

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

The Agent sought compensation for NSF charges. The Agent testified that the Landlord collects rent through automatic withdrawals and the Tenant's payments come back showing insufficient funds. The Agent testified that \$158.33 is owing in NSF fees. The Agent confirmed term 9.2 in the written tenancy agreement relates to this.

The Agent sought an Order of Possession effective June 01, 2020.

### Analysis

Section 26(1) of 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 undisputed testimony of the Agent and written tenancy agreement, I am satisfied the Tenant is required to pay \$760.00 in rent by the first day of each month. Based on the undisputed testimony of the Agent, I am satisfied the Tenant did not have authority under the *Act* to withhold rent during the tenancy. There is no evidence before me that the Tenant did. I find the Tenant was required to pay \$760.00 in rent by the first day of each month 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 and rent ledger, I am satisfied the Tenant failed to pay \$253.33 of rent for May of 2019 and all of rent for September of 2019, October of 2019 and February of 2020. I am satisfied \$2,533.33 in rent was outstanding when the Notice was issued.

Given the Tenant failed to pay rent as required, the Landlord was entitled to serve the Tenant with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Agent, customer receipt and Canada Post website information, I am satisfied the Notice was served on the Tenant in accordance with section 88(c) of the *Act*. Based on the same evidence, I am satisfied this was sent February 25, 2020. Based on the Canada Post website information, I am satisfied the Tenant did not pick up the registered mail. However, as stated at page 12 of Policy Guideline 12:

...the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the Notice March 01, 2020.

Based on the undisputed testimony of the Agent, I am satisfied the Notice served on the Tenant was signed and dated as required by section 52 of the *Act*. Given this, and upon review of the Notice, I 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 March 01, 2020 to pay or dispute the Notice under section 46(4) of the *Act*. I accept the undisputed testimony of the Agent that the Tenant did not dispute the Notice. There is no evidence before me that the Tenant did. I accept the undisputed testimony of the Agent that the Tenant has not paid any rent since the Notice was issued. Again, there is no evidence before me that the Tenant has.

Given the Tenant did not pay the outstanding rent or dispute the Notice as required, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended March 12, 2020, the effective date of the Notice. The Tenant was required under section 46(5)(b) of the *Act* to vacate the rental unit by March 12, 2020.

The Landlord is entitled to an Order of Possession. Pursuant to section 55(2) of the *Act*, I issue the Landlord an Order of Possession effective June 01, 2020.

Based on the undisputed testimony of the Agent, I am satisfied \$4,813.33 in rent is currently outstanding. I allow the Landlord to seek this full amount pursuant to rule 4.2 of the Rules. I have already found that the Tenant did not have authority under the *Act* to withhold rent. The Landlord is entitled to recover the outstanding rent.

The Landlord is also seeking NSF fees. Section 7 of the *Residential Tenancy Regulation* states:

7 (1) A landlord may charge any of the following non-refundable fees...

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent...

(2) A landlord must not charge the fee described in paragraph (1) (d)...unless the tenancy agreement provides for that fee.

Term 9.2 of the written tenancy agreement does provide for a \$25.00 fee for NSF cheques.

I am satisfied based on the undisputed testimony of the Agent that the Landlord has attempted to withdraw rent and has not been successful due to insufficient funds. I am satisfied this is the equivalent of an NSF cheque and that term 9.2 of the written tenancy agreement applies. I am satisfied based on the undisputed testimony of the Agent that \$158.33 in NSF fees is currently owing and award the Landlord this amount.

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*.

The Landlord is therefore entitled to monetary compensation in the amount of \$5,071.66. Pursuant to section 72(2) of the *Act*, the Landlord can keep the \$513.50 security deposit. The Landlord is issued a Monetary Order for the remaining \$4,558.16 pursuant to section 67 of the *Act*.

### Conclusion

The Landlord is entitled to an Order of Possession effective at 1:00 p.m. on June 01, 2020. 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 **SUBJECT TO THE MINISTERIAL ORDER REFERRED TO ON THE LAST PAGE OF THIS DECISION.**

The Landlord is entitled to \$5,071.66. The Landlord can keep the \$513.50 security deposit. The Landlord is issued a Monetary Order for the remaining \$4,558.16. 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: May 25, 2020

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Residential Tenancy Branch