



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL (Landlord)
 CNR (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed the application February 28, 2020 (the “Tenant’s Application”). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 18, 2020 (the “10 Day Notice”).

The Landlords filed the application March 03, 2020 (the “Landlords’ Application”). The Landlords applied for an Order of Possession based on the 10 Day Notice, to recover unpaid rent and for reimbursement for the filing fee.

The Landlords appeared at the hearing. The Tenant did not appear at the hearing. I explained the hearing process to the Landlords. The Landlords provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Landlord testified that the Landlords did not receive the hearing package or evidence for the Tenant’s Application.

The Landlord testified that the hearing package for the Landlords’ Application was sent to the rental unit by registered mail on March 13, 2020. The Landlords had submitted a customer receipt with Tracking Number 1 on it. I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered and signed for March 19, 2020.



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The Landlord testified that the 10 Day Notice, Proof of Service form and rent ledger were sent to the Tenant at the rental unit by registered mail February 19, 2020. The Landlords had submitted a customer receipt with Tracking Number 2 on it. I looked Tracking Number 2 up on the Canada Post website which shows the package was delivered and signed for February 20, 2020.

Based on the undisputed testimony of the Landlord, customer receipt and Canada Post website information, I am satisfied the Tenant was served with the hearing package in accordance with section 89(1)(c) of the *Residential Tenancy Act* (the “Act”). I am satisfied based on the same evidence that the Landlords complied with rule 3.1 of the Rules of Procedure (the “Rules”) in relation to the timing of service. Based on the Canada Post website information, I am satisfied the Tenant received the hearing package March 19, 2020, in sufficient time to prepare for, and appear at, the hearing.

I also note that the Tenant would have been aware of the hearing as the Tenant’s Application was scheduled for the same date and time.

Based on the undisputed testimony of the Landlord, customer receipt and Canada Post website information, I am satisfied the Tenant was served with the evidence referred to above in accordance with section 88(c) of the *Act*. I am not satisfied this was sent to the Tenant as evidence on the hearing as it was sent prior to the Landlords’ Application being filed. However, I am satisfied the evidence referred to above should be admitted given the Tenant has received it and given the Tenant did not appear at the hearing to dispute the admissibility of the evidence. I admit the evidence pursuant to rule 3.17 of the Rules as I do not find there is prejudice to the Tenant in doing so.

The only other evidence submitted by the Landlords are registered mail receipts proving service. I admit these as evidence pursuant to rule 3.17 of the Rules as I do not find it unfair to the Tenant to do so given the nature of the documents. Further, the Tenant did not appear at the hearing to dispute admissibility of these.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant.

Rule 7.3 of the Rules states that an arbitrator can dismiss an Application for Dispute Resolution without leave to re-apply if a party fails to attend the hearing.



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Further, rule 7.4 of the Rules states:

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenant did not appear at the hearing to present evidence, I have not considered her evidence. In the circumstances, I have insufficient evidence before me as to the basis for the Tenant's Application. In the absence of further evidence from the Tenant, the Tenant's Application is dismissed without leave to re-apply.

The Landlords were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Landlords' documentary evidence and oral testimony. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the 10 Day Notice?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

One page of a written tenancy agreement was submitted as evidence. The Landlord testified as follows in relation to the tenancy agreement. There is a written tenancy agreement between the Landlords and Tenant. The Tenant's husband is also named on the tenancy agreement; however, he passed away. The tenancy started September 15, 2013 and is a month-to-month tenancy. Rent is \$950.00 per month due on the first day of each month. The Tenant paid a security deposit of \$387.50.

The Landlord testified that the parties agreed rent could be paid by the sixth day of each month. The Landlord testified that this was a verbal agreement made approximately 14 months ago.



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The Landlord confirmed the Landlords are seeking to keep the security deposit towards unpaid rent.

The 10 Day Notice states the Tenant failed to pay \$1,895.00 in rent due February 06, 2020. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by Landlord M.S. It has an effective date of March 05, 2020.

The Landlord testified that both pages of the 10 Day Notice were sent to the Tenant at the rental unit by registered mail February 19, 2020. As stated, Tracking Number 2 relates to this. As stated, I looked Tracking Number 2 up on the Canada Post website which shows the package was delivered and signed for February 20, 2020.

The Landlord confirmed \$1,895.00 in rent was outstanding when the Notice was issued. The Landlord confirmed the rent payments and balances listed in the rent ledger which include:

Date	Payments	Balances
February 06, 2020		\$2,275.00
February 14, 2020	\$380.00	\$1,895.00
February 21, 2020	\$500.00	\$1,395.00
February 25, 2020	\$300.00	\$1,095.00
February 28, 2020	\$300.00	\$795.00
February 29, 2020	\$100.00	\$695.00

The Landlord testified that the Tenant or her roommate made the following further payments:

- \$750.00 March 01, 2020
- \$750.00 March 29, 2020
- \$750.00 April 25, 2020
- \$500.00 May 03, 2020

The Landlord testified that there is no rent currently outstanding and the Tenant has a credit of \$155.00. The Landlord confirmed the request to recover unpaid rent is no longer an issue given this.



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

The Landlords sought an Order of Possession effective June 05, 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



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(b) must vacate the rental unit to which the notice relates by that date...

Section 55(1) of the *Act* requires an arbitrator to issue an Order of Possession when a tenant disputes a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

Based on the undisputed testimony of the Landlord, I am satisfied the Tenant is required to pay \$950.00 in rent each month by the sixth day of each month. Based on the undisputed testimony of the Landlord, I am satisfied the Tenant did not have authority under the *Act* to withhold rent. There is no evidence before me that the Tenant did. I find the Tenant was required to pay \$950.00 in rent by the sixth 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 Landlord and in part on the rent ledger, I am satisfied the Tenant owed \$1,895.00 in rent on February 18, 2020 when the 10 Day Notice was issued. Given the Tenant failed to pay rent as required, the Landlords were entitled to serve her with the 10 Day Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Landlord, customer receipt and Canada Post website information, I am satisfied the Tenant was served with the 10 Day Notice in accordance with section 88(c) of the *Act*. Based on the Canada Post website information, I am satisfied the Tenant received the 10 Day Notice February 20, 2020.

Upon a review of the 10 Day 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 receipt of the 10 Day Notice on February 20, 2020 to pay the outstanding rent or dispute the 10 Day Notice under section 46(4) of the *Act*. I find the Tenant had until February 25, 2020 to do either of these.

Based on the undisputed testimony of the Landlord and rent ledger, I am satisfied the Tenant only paid \$800.00 of the outstanding rent by February 25, 2020. This was not



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sufficient to cancel the 10 Day Notice as the Tenant was required to pay \$1,895.00 by February 25, 2020 in order to cancel the 10 Day Notice.

Further, the Tenant did not file the dispute until February 28, 2020, after the five-day time limit for doing so. The Tenant did not seek more time to file the dispute. The Tenant did not appear at the hearing.

I find the Tenant did not pay the outstanding rent in full or dispute the 10 Day Notice within the five-day time limit set out in section 46(4) of the *Act*. Therefore, pursuant to section 46(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended March 05, 2020, the effective date of the 10 Day Notice. The Tenant was required to vacate the rental unit by March 05, 2020.

I note that, even if the Tenant had disputed the 10 Day Notice within the five-day time limit, the dispute has been dismissed without leave to re-apply. The Landlords therefore would have been entitled to an Order of Possession pursuant to section 55(1) of the *Act* in any event.

I find the Landlords are entitled to an Order of Possession based on the 10 Day Notice and I issue the Landlords this Order pursuant to section 55(2)(b) of the *Act*. The Order is effective at 1:00 p.m. on June 05, 2020.

I am not satisfied the Landlords are entitled to recover unpaid rent because the Landlord testified that the Tenant does not currently owe any rent and in fact has a \$155.00 credit. Therefore, the request to recover unpaid rent is dismissed without leave to re-apply. However, this only relates to unpaid rent up to the hearing date. If the Tenant remains in the rental unit and fails to pay rent in the future, the Landlords can file an Application for Dispute Resolution to recover this.

As the Landlords were successful in the Application, I award the Landlords reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Landlords can keep \$100.00 of the security deposit as reimbursement for the filing fee pursuant to section 72(2) of the *Act*.



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Conclusion

The Tenant's Application is dismissed without leave to re-apply.

The Landlords are issued an Order of Possession effective at 1:00 p.m. on June 05, 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 Landlords are entitled to reimbursement for the filing fee and can keep \$100.00 of the security deposit for this.

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 05, 2020

Residential Tenancy Branch