



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bastion Westpoint Properties  
Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** MNR, MNDCL, FFL

### **Introduction**

This hearing dealt with the landlord's application for unpaid rent. The landlord's agent appeared for the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of hearing documents upon the tenant. The landlord's agent testified that the proceeding package was sent to the tenant via registered mail at the tenant's place of residence on February 5, 2020 and successfully delivered on February 13, 2020. The landlord's agent orally provided the registered mail tracking number and I have recorded it on the cover page of this decision. I was satisfied the tenant was duly served with notification of this proceeding and I proceeded to hear from the landlord without the tenant present.

It should be noted that the landlord had included claims for amounts other than unpaid rent in filing its claim against the tenant and during the hearing the landlord's agent withdrew those claims after I pointed out the relevant provisions of the Act and Residential Tenancy Regulations. Those other claims are recorded as being withdrawn, and without leave to reapply for those amounts.

### **Issue(s) to be Decided**

1. Has the landlord established an entitlement to recover unpaid rent from the tenant for December 2019 and January 2020, as claimed?
2. Award of the filing fee.

### **Background and Evidence**

On October 25, 2019 a written tenancy agreement was executed for a tenancy set to commence on December 1, 2019 for a fixed term set to expire on August 31, 2020. The

tenant was required to pay a security deposit of \$1050.00 and rent of \$2100.00 on the first day of every month.

The security deposit payment was dishonoured. The tenant set up a pre-authorized payment for the rent and the rent for December 2019 was also dishonoured. The landlord submitted that the tenant did not show up or would cancel appointments to perform the move-in inspection and the tenant never took possession of the rental unit. The tenant communicated to the landlord that she still wanted to take possession of the rental unit for January 2020 but her January 2020 rent payment was also dishonoured.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on December 17, 2020 with a stated effective date of January 1, 2020 and mailed it to the tenant on December 17, 2020. The tenant assured the landlord that she still wanted to rent the unit and payment would be forthcoming, and the tenant authorized payment for January 2020 rent. The landlord did not receive payment for the outstanding rent for December 2019 and the rent payment for January 2020 was also dishonoured. The landlord issued another 10 Day Notice and sent it to the tenant via registered mail on January 10, 2020. The 10 Day Notice issued on January 10, 2020 has a stated effective date of January 25, 2020. The tenant did not pay the outstanding rent or dispute the 10 Day Notice.

The landlord's agent testified that the unit remained vacant until April 2020 but the landlord has limited its claim to the months of December 2019 and January 2020 since the unit was held for the tenant to take possession for those months.

Evidence provided for this proceeding included copies of: the executed tenancy agreement; the 10 Day Notice served on January 10, 2020; the registered mail receipt for service of the 10 Day Notice on January 10, 2020; the tenant's ledger account; a written timeline prepared by the landlord; and, several electronic exchanges between the parties.

### Analysis

In this case, I was presented an executed tenancy agreement providing as evidence the parties agreed that a tenancy for the rental unit would commence on December 1, 2019. The tenant never did take possession of the rental unit; however, section 16 of the Act provides:

**16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

[My emphasis underlined]

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I was not provided any evidence that suggests the tenant had a legal right to withhold rent from the landlord.

In light of the above, I find the tenant was bound to fulfill the terms agreed upon on October 25, 2019, including the requirement to pay rent of \$2100.00 starting on December 1, 2019 until August 31, 2020.

The tenant's rent payment for December 2019 and January 2020 was dishonoured and I find the landlord entitled to receive that rent from the tenant pursuant to the tenancy agreement. The tenancy legally came to an end in January 2020 by way of a 10 Day Notice to End Tenancy for Unpaid Rent. Although the landlord may have been entitled to seek recovery of loss of rent for months after January 2020 the landlord limited its claim to the months of December 2019 and January 2020 and I grant the landlord's request to recover rent from the tenant for those months. Therefore, I award the landlord \$4200.00 for unpaid rent for the months of December 2019 and January 2020.

I further award the landlord recovery of the \$100.00 filing fee paid for this application.

In keeping with all of my findings above, I provide the landlord with a Monetary Order in the total sum of \$4300.00 to serve and enforce upon the tenant.

### Conclusion

The landlord is provided a Monetary Order in the sum of \$4300.00 to serve and enforce upon the tenant.

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: July 07, 2020

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Residential Tenancy Branch