



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WIDSTEN PROPERTY MANAGEMENT  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, FFL

### Introduction

On July 2, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession for the rental unit and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlords agent (“the Landlord”) attended the teleconference hearing; however, the Tenant did not. The line remained open while the phone system was monitored for eleven minutes and the Tenant did not call into the hearing during this time.

The Landlord provided affirmed testimony that the Tenant was served the Notice of Dispute Resolution Proceeding in person at the rental unit on July 7, 2020 at 10:09 am.

I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 of the *Act*.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord testified that the tenancy began on May 1, 2017 and is currently on a month to month basis. Rent in the amount of \$1,172.00 is to be paid to the Landlord by

the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$550.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement. The Landlord provided a Tenant Ledger showing rent payments made by the Tenant from January 2019 to July 1, 2020. The Ledger indicates that the Tenant did not pay the rent of \$1,172.00 owing for March 2020, and that the rent for April, May, June and July 2020 have also not been paid.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 25, 2020 ("the 10 Day Notice") in person on June 25, 2020. The 10 Day Notice has an effective date of July 5, 2020.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$1,172.00 which was due on March 1, 2020. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

There is no evidence before me that the Tenant made an application to dispute the 10 Day Notice.

The Landlord testified that the Tenant did not pay the rent owing for March 2020 within five days of receiving the 10 Day Notice. The Landlord testified that March 2020 rent has not been paid.

The Landlord testified that the Tenant is still living in the rental unit and the Landlord seeks an order of possession.

### Analysis

I note that on March 30, 2020 the Minister of Public Safety and Solicitor General declared a state of emergency because of the COVID -19 pandemic. The Ministerial Order M089 provides that a Landlord must not issue a notice to end tenancy while the Order is in effect. The Order applies from March 30, 2020 and ends on the date on which the state of emergency declared March 18, 2020 expires or is cancelled.

Ministerial Order M195 issued June 24, 2020, pursuant to the State of Emergency declared on March 18, 2020 provides that affected rent is rent that is due and payable during the emergency period / state of emergency (March 18, 2020 on onward) The Order provides that Landlords cannot evict Tenants for unpaid rent relating to affected

rent; however, the Order no longer prohibits a Landlord from issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities if the arrears were accrued prior to March 18, 2020.

Section 26 of the Act provides that 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.

Section 46(5) of the Act provides that if a Tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Section 55 (2)(b) of the Act provides that a Landlord may request an order of possession of a rental unit by making an application for dispute resolution when a notice to end the tenancy has been given by the Landlord, and the Tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. In the circumstances described in 55 (2)(b), the director may, without any further dispute resolution process grant an order of possession, and if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities I make the following findings:

I find that the Landlord issued the 10 Day Notice on June 25, 2020 after the Ministerial Order M089 was replaced by Ministerial Order M195 permitting issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for arrears accrued prior to March 18, 2020.

I find that the Tenant received the 10 Day Notice on June 25, 2020 and I find that the Tenant did not pay all the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice. I find that the rent of \$1,172.00 was owing prior to March 18, 2020 and this rent is not considered to be affected rent.

I find that the Tenant did not apply to dispute the 10 Day Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find that the Tenant did not have a legal

right under the Act or under the emergency orders to withhold payment of the March 2020 rent.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I authorize the Landlord to keep the amount of \$100.00 from the security deposit.

### Conclusion

The Tenant failed to pay the rent due under the tenancy agreement and did not pay the rent within 5 days of receiving the 10 Day Notice and did not file to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

The Landlord is granted an order of possession effective two (2) days after service on 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 30, 2020

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Residential Tenancy Branch