



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, OPRM-DR, FFL

### Introduction

On September 4, 2020 the landlord applied for an order of possession of the rental unit, and a monetary order for rent not paid. Additionally, they applied for reimbursement of the application filing fee.

The landlord's application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because required information on the tenancy agreement was not in place. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on November 23, 2020.

The landlord attended the telephone conference call hearing; the tenant did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with the notice of this hearing. This means the landlord must provide proof that they served the document in a verified manner allowed under section 89 of the *Act* and I must accept that evidence.

In the hearing, the landlord stated that they served a copy of that document via registered mail to the tenant on September 29, 2020. They stated the tracked information shows it was delivered on October 5, 2020, to the rental unit still occupied by the tenant. This package included the landlord's prepared documentary evidence.

From this information I find the landlord served the information in line with section 89.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord's agent spoke to the terms of the tenancy agreement in the hearing. They verified that the rent amount was \$300 per month. The landlord's agent stated that this tenancy started on March 1, 2020, based on the agreement showing that the tenant paid a security deposit of \$150 on March 1, 2020. A signed declaration from the landlord that appears in their evidence provides that the tenancy started on February 1, 2020. A one-page addendum accompanies the agreement in the evidence; both parties signed this document on February 12, 2020.

The landlord provided a copy of the 10-Day Notice, issued August 28, 2020. That gave the move-out date of September 15, 2020. This listed the failure by the tenant to pay the rent that was due on March 1, 2020. The landlord served this document by registered mail "to the address at which the person resides" as indicated on the document. A tracking information sheet indicates that the 10-Day Notice was delivered on September 2, 2020.

The landlord provided a statutory declaration – undated – as evidence for this hearing. This provides that the rental started on February 1, 2020. It states that the tenant failed to pay rent for April through to September 2020.

In the hearing, the landlord's agent provided that the tenant paid subsequent rent amounts. This was the full amount of rent for September, and on November 19 the tenant paid \$600. The landlord's agent stated their inference that this amount was for the months of October and November together.

After service of the 10-Day Notice, the landlord provided a repayment plan to the tenant, dated September 29, 2020. A copy of this plan was provided in the landlord's evidence. The landlord's agent provided that there was no acknowledgement from tenant on this payment

plan. The tenant did not make payments in accordance with what the plan sets out on the dates specified.

The agent of the landlord set out that rent amounts still owing are as set out in the payment plan, a copy of which they provided in their evidence. This is for the total of 5 months rent owing, at \$300 per month. The total is \$1,500. At the time of the landlord's Application on September 4, 2020, this was the balance for April 2020 through to August 2020.

At the time of the hearing in November, the landlord's agent stated they knew of no communication between the landlord and the tenant, and they also had no direct contact with the tenant. They stated the tenant was still occupying the rental unit.

### Analysis

The conflicting information in the landlord's evidence prevents my granting of an Order of Possession, and a monetary order for unpaid rent. The landlord has not presented a clear picture of the timeline of events. The burden of proof is on the landlord to show that an end of tenancy is justified, thus verifying the issuance of the 10-Day Notice. In the hearing, the landlord's agent was not able to give a fulsome picture of the gaps in the landlord's evidence here.

A full copy of the tenancy agreement was not in place. Because of this, I am unable to determine the start of the tenancy. An addendum was signed on February 12; however, the landlord in their statutory declaration stated the start of tenancy was February 1, and it is otherwise unexplained why the addendum was signed some time later.

Moreover, the landlord's Application states that the tenancy agreement was effective on March 1, 2020. This conflicts with the 10-Day Notice indicating that the rent for the month of March was not paid. If there was an agreement about deferred payment for the March rent – which in itself would conflict with the whole basis for the 10-Day Notice – that evidence is not in what the landlord presents here. In the interests of fairness to the tenant, I cannot correct the evidence provided on the landlord's behalf.

Despite issuing the 10-Day Notice for March rent not paid, this is not indicated on the Statutory Declaration prepared by the landlord. This document lists the months of April 2020 going forward.

For these reasons, the landlord has not met the burden of proof to show the 10-Day Notice is valid. I do not award an Order of Possession to the landlord for this reason.

One month after the landlord issued the 10-Day Notice on August 28, 2020, they presented a payment plan to the tenant on September 29, 2020. This raises the legitimate question on whether the tenant would have been able to make payments on this plan, despite being served the 10-Day Notice one month prior. The landlord did not address their issuance of a payment plan in their Statutory Declaration.

The landlord's agent attended the hearing; however, they did not provide sufficient evidence to explain clearly the timeline of events here concerning the tenant not paying rent. Because they were not successful in their Application, the landlord's claim for the Application filing fee is dismissed.

### Conclusion

For the above reasons, the landlord's application for an order of possession and monetary compensation is dismissed. The landlord has leave to re-apply. While I have provided leave to reapply, it does not extend any applicable time limits under the *Act*, and I have made no legal findings on the merits of the dispute.

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: November 25, 2020

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Residential Tenancy Branch