



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, OPR

### Introduction

On September 24, 2020 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The Landlords and the Tenant M.N. attended the hearing at the appointed date and time. The Landlords testified the Application and documentary evidence package was served to the Tenant by registered mail on October 16, 2020. The Tenant confirmed receipt. I find the above mentioned documents were sufficiently served pursuant to Sections 88 and 89 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
2. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy started on May 1, 2018. Currently, the Tenant is required to pay rent in the amount of \$1,140.00 to the Landlords which is due on the first day of each month. The Tenant paid a security deposit in the amount of \$500.00. The Tenant continues to occupy the rental unit.

The Landlords testified the Tenant did not pay rent in the amount of \$1,140.00 when due on September 1, 2020. Subsequently, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 8, 2020 (the "10 Day Notice") with an effective vacancy date of September 18, 2020. The Landlords stated that the 10 Day Notice was posted to the Tenant's door on September 8, 2020.

The Landlords testified that they received a partial payment of \$840.00 from the Tenant on September 9, 2020 and a further payment of \$300.00 on September 15, 2020. The Landlords confirmed that the full amount of rent that was indicated on the 10 Day Notice has been paid but was paid late. The Landlords are seeking an order of possession based on late payment of rent. The Landlord also referred to other amounts owing from late fees to failing to pay a portion of rent in June and August 2020, as well as discussion surrounding the security deposit.

The Tenant stated that he did receive the 10 Day Notice which had been posted to his door, however, the Tenant could not recall which day he collected the 10 Day Notice as he had been out of town. The Tenant acknowledged the payments he made to the Landlords on September 9 and 15, 2020. The Tenant stated that currently he has no outstanding balance of rent owing to the Landlords.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act explains that the 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 of the Act states 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.

I accept that the Landlords served the 10 Day Notice dated September 8, 2020 with an effective vacancy date of September 18, 2020, to the Tenant on September 8, 2020 by posting it to the Tenant's door. The Tenant confirmed receipt, however, could not recall the date he received the 10 Day Notice. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on September 11, 2020.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until September 16, 2020 to either pay the outstanding rent owed to the Landlords in full, or make an Application for dispute resolution.

I accept that the parties agreed that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$1,140.00 which was due on September 1, 2020. I accept that the Tenant paid \$840.00 to the Landlords on September 9, 2020 and a further \$300.00 on September 15, 2020. As such, I find that the Tenant paid the full amount of overdue rent owing as indicated on the 10 Day Notice within the 5 days permitted under Section 46(4).

As such, I dismiss the Landlords' Application for an Order of possession without leave to reapply. I find that the 10 Day Notice dated September 8, 2020 has no effect and is set aside. I order that the tenancy continue unless it is ended in accordance with the *Act*. As the Landlords were not successful with their Application, I find that they are not entitled to the return of the filing fee.

During the hearing, the Landlords referred to other monetary amounts owed by the Tenant. The Landlords are at liberty to reapply for monetary compensation if they feel entitled to it. As these amounts were not captured in the 10 Day Notice, they were not considered in this decision. Similarly, the Tenant expressed some displeasures with the tenancy. The Tenant is also at liberty to apply for dispute resolution should he feel that the Landlords are not complying with the *Act*.

Conclusion

The 10 Day Notice dated September 8, 2020 issued by the Landlords has been cancelled and is of no force or effect. The Landlords' Application for an order of possession is dismissed without leave to reapply.

The tenancy shall continue until ended in accordance with the Act.

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: December 08, 2020

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Residential Tenancy Branch