



# 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

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application. The landlord's application was made by way of the Direct Request process which was referred to this participatory hearing, and an Interim Decision was provided to the landlord.

The landlord and an agent for the tenants attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issues to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on May 1, 2020 and the tenants still reside in the rental unit. Rent in the amount of \$1,800.00 is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$900.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenants made partial payments of rent for July and August, 2020 in the amount of \$1,000.00, leaving \$800.00 outstanding for each of those months, and no rent has been paid for September to December, 2020 inclusive. The tenants are currently in arrears of rent the sum of \$8,800.00, which the landlord claims as against the tenants.

On September 6, 2020 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), by stapling it to the door of the rental unit. A copy has been provided for this hearing and it is dated September 6, 2020 and contains an effective date of vacancy of September 16, 2020 for unpaid rent in the amount of \$1,800.00 that was due on September 1, 2020. The landlord also knocked on the door and gave another copy to a caregiver, or another person in the rental unit.

The tenants have not paid the outstanding rent and have not served the landlord with an Application for Dispute Resolution disputing the Notice.

**The tenants' agent** testified that one of the tenants has vacated the rental unit, and therefore any monetary orders should be for only the tenant who still resides in the rental unit. The tenant who still resides in the rental unit has refused to pay the rent because the landlord has entered the rental unit contrary to the law.

The tenant's agent also offered a settlement, which was refused by the landlord, and the landlord testified that he was not notified that one of the tenants had vacated.

### Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement. Since the landlord has not been notified, or agreed to end the tenancy for one of the tenants, and the tenancy agreement specifies both tenants, both tenants are responsible for the payment of rent.

The law also specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) the tenant has 5 days to pay the rent in full or dispute it by filing and serving the landlord with an Application for Dispute Resolution. If the tenant pays the rent in full, the Notice is of no effect. However, if the tenant doesn't pay the rent or dispute the Notice within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I accept the undisputed testimony of the landlord that the tenants were served with the Notice by posting it to the door of the rental unit on September 6, 2020,

which is deemed to have been served 3 days later. The landlord also testified that he handed a copy to a caregiver, however I am not satisfied that the caregiver is of legal age or permitted to accept service on behalf of the tenants.

I have also reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form and contains information required by the *Act*. The landlord testified that the tenants have not paid any of the outstanding rent and have not served the landlord with an Application for Dispute Resolution disputing the Notice, and I have no such application before me. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

I also accept the undisputed testimony of the landlord that the tenants are in arrears of rent the sum of \$8,800.00, and I grant a monetary order in favour of the landlord in that amount.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$8,900.00.

This order is final and binding and may be enforced.

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 18, 2020

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Residential Tenancy Branch