



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING SOCIETY and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-PP, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 09, 2020 (the "Application"). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 22, 2020 (the "Notice");
- For reimbursement for the filing fee.

The Agents for the Landlord attended the hearing. Nobody attended the hearing for the Tenant. I explained the hearing process to the Agents who did not have questions when asked. The Agents provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Agents testified as follows. The hearing package and evidence were sent by registered mail to the rental unit on November 17, 2020. Tracking Number 1 relates to this. The Landlord submitted the customer receipt for this.

Based on the undisputed testimony of the Agents and customer receipt, I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(c) and 89(2)(b) of the *Residential Tenancy Act* (the "Act"). I am also satisfied the Landlord complied with rule 3.1 of the Rules of Procedure in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agents were given an opportunity to present relevant evidence and make relevant

submissions. I have considered all documentary evidence and oral testimony of the Agents. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The Agents testified as follows.

There is no written tenancy agreement between the parties. The Landlord took over the rental unit in 2013 and the Tenant lived in the rental unit at the time. They do not know when the Tenant moved in. The tenancy is a month-to-month tenancy. Rent is \$1,100.00 per month due on the first day of each month. There is no record of the Tenant paying a security or pet damage deposit.

The Notice was issued for outstanding rent from March of 2019 to March of 2020 and for September of 2020 for a total of \$15,345.10.

The Notice was sent to the rental unit by registered mail on September 17, 2020. Tracking Number 2 relates to this.

The Tenant did not dispute the Notice. The Tenant did not have authority under the *Act* to withhold rent.

The Tenant paid \$1,335.00 in rent on December 14, 2020. The Tenant was issued "use and occupancy" receipts.

The Landlord is seeking an Order of Possession effective two days after service on the Tenant.

I looked Tracking Number 2 up on the Canada Post website which shows the package was delivered October 16, 2020 after a notice card and final notice card were left.

The Landlord submitted the following documentary evidence. A letter to the Tenant about the outstanding rent of \$15,345.10. The Notice which states the Tenant failed to

pay \$15,345.10 in rent due September 01, 2020. A Repayment Plan. A customer receipt with Tracking Number 2 on it.

### Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants have failed to pay rent. The relevant portions of section 46 state:

- 46 (1) 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.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date...

I accept the undisputed testimony of the Agents as set out above. Based on the undisputed testimony and evidence referred to above, I am satisfied of the following.

The Tenant is required to pay \$1,100.00 in rent per month by the first day of each month. The Tenant did not have authority under the *Act* to withhold rent for March of 2019 to March of 2020 or for September of 2020. Therefore, the Tenant was required to pay \$1,100.00 by the first day of each month from March of 2019 to March of 2020 and for September of 2020 pursuant to section 26(1) of the *Act* and section 46(3) of the *Act* does not apply.

The Tenant failed to pay \$15,345.10 in rent from March of 2019 to March of 2020 and for September of 2020. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve the Tenant with the Notice pursuant to section 46(1) of the *Act*.

The Notice was served on the Tenant in accordance with section 88(c) of the *Act* on September 17, 2020.

Based on the Canada Post website information, I am satisfied the Tenant received the Notice October 16, 2020. Given the Tenant did not appear to explain the delay in picking up the Notice, I find the deeming provision in section 90(a) of the *Act* applies and the Tenant is deemed to have received the Notice September 22, 2020. The Tenant would need to provide compelling evidence to rebut the deeming provision (see Policy Guideline 12, page 12). The Tenant did not appear at the hearing or provide evidence for the hearing and therefore has not provided compelling evidence to rebut the deeming provision.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on September 22, 2020 to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*. I accept the undisputed testimony of the Agents that the Tenant did not dispute the Notice. There is no evidence before me that the Tenant did. I accept the undisputed testimony of the Agents that the next payment made by the Tenant was on December 14, 2020.

Given the Tenant did not pay the outstanding rent amount by September 27, 2020 or dispute the Notice by September 28, 2020, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended October 07, 2020, the effective date of the Notice. The Tenant was required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by October 07, 2020.

The Landlord is entitled to an Order of Possession. Pursuant to section 55 of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

As the Landlord was successful in the Application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. I issue the Landlord a Monetary Order in this amount.

### Conclusion

The Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to a Monetary Order in the amount of \$100.00 for the filing fee. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: February 03, 2021

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Residential Tenancy Branch