



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the Act) and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

On December 31, 2020, the Adjudicator considered the landlord's application. The tenants were found served with the landlord's application; however, the Adjudicator adjourned the matter for a participatory hearing as they found deficiencies in their submitted application.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch Rules of Procedure 6.11. The parties were told that if any recording devices are being used they must immediately cease the recording of this hearing. The parties were informed if any recording is made and used for any purpose, they will be referred to the Residential Tenancy Branch Compliance Enforcement Unit and may be subject to an administrative penalty of up to \$5,000.00 for each day the contravention or failure continues. The parties confirmed they were not recording the hearing.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on July 4, 2020. Rent in the amount of \$1,300.00 was payable each month. The tenancy agreement states that rent is due on the first day of the rental period. While the landlord did not write the date as this was left blank. However, the tenancy started on the 4<sup>th</sup> day of month, and since there was no other date noted, I find rent is due on the first day of the rental period which is the 4<sup>th</sup> day of each month.

On December 3, 2020, the tenants had made an application for dispute resolution seeking an order to restrict the landlord's access to the rental unit and to comply with the Act. The tenant's application was heard on February 26, 2021 and was dismissed without leave to reapply. I have noted the filed number on the covering page of this decision.

I have referred to the tenant's application because I was the Arbitrator at the hearing and the reasons for the tenant's application was related to the service of the notice to end tenancy that is before me on this day. In the tenant's written submission they state the following "The landlord has his patent try to force themselves in our apartment when they served the eviction notice" I note filed in evidence for that hearing was a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, containing all three pages.

The tenants testified that on November 27, 2020, the landlord parents tried to force themselves in the rental to serve them with the eviction notice. The tenants stated that the landlord's parent then put the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), under the door. The tenants stated they received the Notice; however, they did not look at it as they determined it was not served properly.

The tenant testified that the adjudicator decision made on December 31, 2020, show that they did not receive the 3<sup>rd</sup> page of the notice. The tenants read that portion of the decision at the hearing, which reads as follows.

"I also note that the landlord has not submitted the third page of the 10 Day Notice. In a Direct Request Proceeding, **I find I cannot confirm** whether the landlord served the tenants the complete three-page 10 Day Notice form"

**[My Emphasis Added.]**

The tenants testified that they paid the outstanding rent on December 11, 2020 in the amount of \$2,400.00 as it was placed into the landlord's account and subsequent was done through a third party, money mart transfer.

The landlord testified that the tenants were served with all three pages of the Notice and a copy of the Notice was provided at the prior hearing held on February 26, 2021 and the 3<sup>rd</sup> page was simply miss uploading for this hearing.

The landlord testified that when their parent went to the rental unit on November 27, 2020, to collect the outstanding rent or serve the tenants with the Notice, the female tenant was hostile, threatened their parents and slammed the door in their face. The landlord stated that their parents then pushed the Notice under the door. The landlord stated the tenants were served as the Notice was left in a conspicuous place at the address. Filed in evidence is a photograph showing the Notice was placed under the door.

The landlord testified that the tenants are simply refusing to pay the rent and they have not paid any rent since November 2020 and it is not true that they received \$2,400.00 on December 11, 2020. The landlord stated the tenants currently owed \$6,300.00 in unpaid rent.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

In this case, I am satisfied that the tenants were served with the Notice on November 27, 2020. While I accept some type of incident occurred at the time; however, the Notice was placed under the door of the rental unit and the tenants were home at the time, that was not denied by the tenants. I find the tenants were served in accordance with section 88(g) of the Act.

The tenants dispute they received the 3<sup>rd</sup> page of the Notice; however, that is only because that was a question the Adjudicator had raised in their decision of December 31, 2020 and was one of the reasons it was sent to a participatory hearing.

However, the evidence of the tenants at this hearing, was they never looked at the Notice after it was put underneath their door. Therefore, I find it would be impossible for the tenants to know if they had or did not have the 3<sup>rd</sup> page if their testimony is true.

Simply because you do not like how a document was received, does not invalidate the Notice and ignoring the Notice is not reasonable.

In this case, I accept the evidence of the landlord that the tenants received the Notice in the proper form, while I accept the 3<sup>rd</sup> page of the Notice was not submitted with the landlord's application. However, a copy of the Notice was also filed as evidence on the tenant's application that was heard on February 26, 2021, I was the Arbitrator at the hearing, and I had reviewed the Notice at that time, which had three pages.

Further, I note the information for the tenants on the 3<sup>rd</sup> page of the Notice is reiterating what has been written on the first page of the Notice, which is how to dispute the notice. The balance of page 3 is information for the landlord. Even, if the tenants did not receive page 3, which I do not accept, they had sufficient information that they must pay their rent or to dispute the Notice.

I find the tenants did not paid the outstanding rent within the statutory time limit and did not apply to dispute the notice as their last date to pay the rent or dispute the Notice was December 2, 2020. The tenants did neither, therefore the tenants are 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 the tenancy legally ended on December 12, 2020; this is the date in the Notice.

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 tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

In this case, I am satisfied that the outstanding rent of \$800.00 due on November 4, 2020, was not paid. While the tenants have alleged it was paid on December 11, 2020; however, they did not provide any supporting evidence, which would have been reasonable as that was the subject of this hearing. The landlord has denied they have received any subsequent rent from the tenants. Therefore, I find the landlord is entitled to recover unpaid rent for November 2020, in the amount of **\$800.00**.

I find that the landlord has established a total monetary claim of **\$900.00** comprised of unpaid rent, and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$650.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the

balance due of **\$250.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

In most cases, I would deal with subsequent unpaid rent since the application was filed; however, as the tenants allege they have proof of payments for subsequent rent, I will leave the issue of subsequent rent for another application. It would be reasonable if the tenants have such proof that this money was deposited into the landlord's account through a 3<sup>rd</sup> party, that they would provide a copy of that to the landlord to avoid a further hearing. Also, there could be an error in the information and this money may have been sent somewhere else and this would need to be investigated by the tenants.

### Conclusion

The tenants failed to pay rent within the statutory time limit and did not file to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession and may keep the security deposit in partial satisfaction of the claim. I grant the landlord a monetary order for the balance due.

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: March 23, 2021

---

Residential Tenancy Branch