



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPRM-DR, OPR-DR, FFL**

### **Introduction**

This participatory hearing was scheduled pursuant to an Interim Decision issued by an Adjudicator on March 26, 2021 in response to the landlord's application for an Order of Possession and Monetary Order under the Direct Request procedure.

The Interim Decision should be read in conjunction with this decision.

At the participatory hearing, only the landlords appeared. The landlords were affirmed and confirmed they were not recording the proceeding.

Since the tenant did not appear, I explored service of the hearing materials upon the tenant. The landlords submitted a registered mail receipt, including tracking number, dated April 1, 2021, as proof the Interim Decision and Notice of Dispute Resolution Proceeding were sent to the tenant at the rental unit address. The landlords confirmed that the tenant continues to occupy the rental unit as of today's date, although they are expecting him to move out later today. A search of the tracking number showed the tenant has yet to pick up the registered mail; however, in keeping with section 90 of the Act, I find the tenant to be deemed served five days after mailing and I continued to hear this matter without the tenant present.

The landlords requested their monetary claim be amended to include unpaid and/or loss of rent for the months of March 2021 and April 2021 since the tenant has continued to hold possession of the rental unit without paying any monies for his continued use and occupation. The landlords also requested authorization to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

Rule 4.2 of the Rules of Procedure permit me to amend a claim during the hearing in certain circumstances. Rule 4.2 provides as follows:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In the circumstances described by the landlords, I find it reasonably anticipated that the landlords would seek further unpaid and/or loss of rent incurred while waiting for this hearing. Also, seeking authorization to retain the security deposit to be used to partially offset the unpaid rent is non-prejudicial to the tenant since it would reduce any Monetary Order I issue. Therefore, I granted the landlord's request for amendment.

#### Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to a Monetary Order for unpaid and/or loss of rent?
3. Are the landlords authorized to retain the tenant's security deposit?
4. Award of the filing fee.

#### Background and Evidence

The tenancy started on September 1, 2017 and the tenant paid a security deposit of \$800.00. The tenant was required to pay rent of \$1600.00 on the first day of every month.

The landlords testified that the last time the tenant paid rent was for the month of February 2020.

On February 25, 2021 the landlord prepared the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"). The 10 Day Notice indicates rent of \$9600.00 was outstanding as of February 1, 2021 and has a stated effective date of March 10, 2021.

I noted that the 10 Day Notice indicates the 10 Day Notice was served by posting on the door but the Proof of Service indicates it was served in person. Inconsistency and incompleteness with respect to the proof of service of the 10 Day Notice are the reasons the landlord's application did not succeed under the Direct Request procedure.

The landlord (referred to by initials DH) testified that she prepared the 10 Day Notice in advance of going to the rental unit and she anticipated that the 10 Day Notice would be posted to the door of the rental unit since she rarely saw the tenant in person but when she and the other landlord (referred to by initials SM) went to the property to post the 10 Day Notice the tenant was home. After doing an inspection and having a conversation with the tenant, DH gave the 10 Day Notice to the tenant in person. This was witnessed by SM. Since the tenant was actually served in person the Proof of Service indicates the 10 Day Notice was served in person; however, DH forgot to change the 10 Day Notice to indicate it was served in person.

The landlords testified that after serving the tenant with the 10 Day Notice the tenant did not pay any of the outstanding rent. Nor, did the tenant file to dispute the 10 Day Notice. The tenant continues to occupy the rental unit and has not paid any monies for use and occupancy for the months of March 2021 or April 2021.

The landlord explained that the sum of \$9600.00 that appears on the 10 Day Notice and on the Application for Dispute Resolution is the sum of unpaid rent for the months of September 2020 through February 2021. Although the tenant owes rent for months prior to September 2020 the landlords did not include those arrears due to restrictions for ending a tenancy for unpaid rent prior to September 2020 due to the Covid-19 pandemic; however, the landlords reserve the right to pursue the tenant for those arrears at a later date.

Documentary evidence provided for my review included copies of: the tenancy agreement; the 10 Day Notice; the Proof of Service for the 10 Day Notice; a written witness statement of SM concerning service of the 10 Day Notice; Direct Request Worksheets showing the calculation of the amount claimed; and, registered mail receipts.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent.

It should be noted that on March 30, 2020 an Order was issued by the Minister of Public Safety and Solicitor General under the *Emergency Program Act* suspending a landlord's right to issue a Notice to End Tenancy due to the state of emergency as a result of the Covid-19 pandemic ("Minister's Order"); however, the suspension was lifted for rent

owing from August 18, 2020 onwards. The rent the accrued during the period of March 18, 2020 through August 17, 2020 remains outstanding but a landlord was required to issue a Repayment Plan to end the tenancy for unpaid rent incurred during that period.

I heard the tenant failed to pay rent for the months of March 2020 through August 2020. While the tenant remains liable for such unpaid rent, the landlords are not seeking to end the tenancy for unpaid rent incurred for those months. Rather, the landlords are seeking to end the tenancy for unpaid rent incurred for the months of September 2020 onwards, which they are entitled to do.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1600.00 on the first day of every month and the tenant has failed to do so. I also accept that the tenant was personally served with a 10 Day Notice on February 25, 2021. Accordingly, I find the tenant had until March 2, 2021 to either pay the outstanding rent or file to dispute the 10 Day Notice. Since the tenant did neither, I find the tenant conclusively presumed to have accepted the tenancy would end and the tenancy did in fact end on the stated effective date of March 10, 2021. Therefore, I find the landlords is entitled to regain possession of the rental unit and I provide the landlords with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, I find the landlords entitled to recover from the tenant the unpaid rent for the period of September 2020 through February 2021, in the sum of \$9600.00, as requested. I further find the landlords entitled to recover unpaid rent for the month of March 2021 since the tenancy ended on March 10, 2021 and the tenant was holding possession of the rental unit in March 2021 and the tenant did not pay rent for March 2021. I further find the landlords entitled to recover loss of rent for the month of April 2021 since the tenant continued to occupy the rental unit in April 2021 without paying any monies for continued use and occupancy, causing the landlords to suffer an additional loss.

I also award the landlords recovery of the \$100.00 filing fee paid for this application.

I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlords.

In light of the above, the landlords are provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent (September 2020 – February 2021)	\$ 9600.00
Unpaid rent – March 2021	1600.00
Loss of rent – April 2021	1600.00
Filing fee	100.00
Less: security deposit	<u>(800.00)</u>
Monetary Order	\$12100.00

### Conclusion

The landlords are provided an Order of Possession effective two (2) days after service upon the tenant.

The landlords are authorized to retain the tenant's security deposit and are provided a Monetary Order for the balance owing of \$12100.00.

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: April 26, 2021

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Residential Tenancy Branch