



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

On January 25, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on May 14, 2021.

The Landlord attended the hearing; however, neither Tenant attended at any point during the 42-minute teleconference. At the outset of the hearing, I advised the Landlord that recording of the hearing was prohibited. She was reminded to refrain from doing so and she acknowledged this term. All parties in attendance provided a solemn affirmation.

The Landlord advised that she served a Notice of Hearing and evidence package to each Tenant by registered mail on February 22, 2021 (the registered mail tracking numbers are noted on the first page of this Decision). The tracking histories indicated that these packages were not picked up by the Tenants. Based on this undisputed evidence, I am satisfied that the Tenants were deemed to have received the Notice of Hearing and evidence packages five days after they were mailed. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on May 1, 2019, that rent was established at an amount of \$2,100.00 per month, and that it was due on the first day of each month. A security deposit of \$1,050.00 was also paid. She then stated that \$1,000.00 was also paid by the Tenants on May 10, 2019 as some sort of “fire deposit”. She was cautioned that pursuant to Section 19 of the *Act*, she was not permitted to collect more than half a month’s rent for a security deposit or a pet damage deposit, and that any overpayment of these deposits can be withheld from a future month’s rent. As well, she was advised that the *Act* does not have any provisions pertaining to the collection of a “fire deposit”. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the Notice was served to the Tenants by registered mail on January 7, 2021. The Notice indicated that \$6,150.00 was owing for rent on January 1, 2021. The effective end date of the tenancy was noted as January 23, 2021.

She submitted that the \$6,150.00 owing on the Notice was comprised as follows:

- |                                |            |
|--------------------------------|------------|
| • Move-in fee:                 | \$300.00   |
| • Rent arrears (payment plan): | \$3,650.00 |
| • January 2021 rent:           | \$2,100.00 |
| • Insurance fee:               | \$100.00   |

With respect to these amounts, the Landlord advised that the \$300.00 was for the move-in fee that the Tenants were required to pay.

She explained that the \$3,650.00 rental arrears stemmed from rent owing for June, July, and August 2020 based on a payment plan dated August 16, 2020.

She stated that the Tenants did not pay any rent for January 2021.

Finally, she indicated that the parties allegedly agreed to some sort of payment of \$100.00 per month to cover insurance.

She also advised that the Tenants paid the following amounts to her; however, she did not provide any receipts stating “for use and occupancy only”:

- Paid on March 2, 2021: \$1,300.00
- Paid on April 16, 2021: \$2,500.00
- Paid on April 18, 2021: \$750.00
- Paid on May 1, 2021: \$2,500.00

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent or utilities when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenants would have five days to pay the rent or utilities in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Regarding the unpaid rent, the undisputed evidence before me is that the Notice was served on January 7, 2021 by registered mail and the Tenants were deemed to have received the Notice on January 12, 2021. According to Section 46(4) of the *Act*, the

Tenants had 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *“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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the Tenants were deemed to have received the Notice on January 12, 2021, they must have paid the rent in full by Sunday January 17, 2021 or disputed the Notice by Monday January 18, 2021 at the latest. The undisputed evidence is that the Tenants did not pay the rent in full or dispute the Notice. However, when reviewing this Notice, the Landlord did not write the dispute address on the Notice in accordance with Section 52 of the *Act*.

Moreover, the Landlord's request for \$6,150.00 in rent owing is not accurate as \$300.00 of that amount is for a move-in fee, which is not rent. As well, \$3,650.00 appears to be from rent owing on a payment plan that does not appear to be in compliance with the requirements of the *Act*. Finally, the Landlord also included \$100.00 owing on the Notice for some sort of insurance payment; however, there was no evidence of any such agreement with the Tenants, nor was there any indication that this amount was to be considered rent. It should also be noted that the Landlord collected some sort of additional “fire deposit” and it is not clear what exactly this was. As the Tenants were permitted to withhold any over payments of a deposit from a future month's rent, this could potentially also lead to the amount owing on the Notice being incorrect.

Based on these above deficiencies and inconsistencies in the Notice, I am not satisfied that the Notice is valid because the address is not listed and the amount of rent owing on the Notice is unclear and, more likely than not, incorrect. As such, I am satisfied that the Notice is cancelled and of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

In addition, I find it important to note that the Landlord appears to have collected monies for rent since the Notice was served, but no receipts for use and occupancy were ever given. As a result, it appears as if the Landlord has re-instated the tenancy in any event.

As the Landlord was not successful in this claim, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Landlord's Application is dismissed without leave to reapply. Furthermore, the 10 Day Notice to End Tenancy for Unpaid Rent dated January 7, 2021 is cancelled and of no force or effect. The tenancy will 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: May 14, 2021

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Residential Tenancy Branch