



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, FFL

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent.

Both the landlord and the tenant appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed the landlord served the tenant with his proceeding package. I explained the hearing process to the parties and permitted the parties to ask questions about the process.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

### Background and Evidence

Both parties were in agreement they have an oral tenancy agreement; however, the terms of tenancy were less clear.

The landlord testified that the tenancy started in October 2019 or November 2019. The tenant testified the tenancy started in June 2020.

The landlord testified the tenant paid a security deposit equivalent to \$375.00. The tenant testified that she did not pay a security deposit.

The landlord testified the monthly rent was set at \$750.00 payable on the first day of every month. The tenant agreed rent is payable on the first day of every month; however, as for the amount of rent payable, the tenant testified that the monthly rent was initially set at \$775.00 but the landlord reduced it to \$750.00 when he delivered the 10 Day Notice to End Tenancy for Unpaid Rent to her on December 1, 2020.

Both parties provided consistent testimony that the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on December 1, 2020. The 10 Day Notice provided to me by the landlord is dated December 1, 2020 with an effective date of December 31, 2020 and indicates the tenant failed to pay rent of \$1150.00 on November 1, 2020.

The landlord testified that the tenant did not pay one-half of the rent payable for October 2020 and no rent was paid for November 2020, which totals \$1125.00. The landlord did not provide an explanation as to why the 10 Day Notice states \$1150.00 was outstanding instead of \$1125.00. The tenant testified that she had paid rent for October 2020 but the tenant acknowledged she did not pay rent for November 2020.

I noted that the landlord only uploaded the first and second page of the 10 Day Notice. The landlord testified that all three pages were served to the tenant. The tenant stated the first two pages were definitely served to her and that it was possible there was a third page; however, the tenant stated she threw her copy of the 10 Day Notice out after the landlord's previous Application for Dispute Resolution was dismissed (file number referenced on the cover page of this decision).

The tenant acknowledged that she did not pay rent for November 2020 and December 2020 when due because she lost her job and was waiting for Employment Insurance benefits. The tenant testified that she paid the manager \$300.00 in late December 2020 or early January 2021. The landlord acknowledged that \$300.00 was received from the tenant in January 2021.

The tenant testified that she offered \$1200.00 to the manager in February 2021 but that he declined to take it. Both parties made consistent statements that the manager is now deceased.

The tenant attempted to introduce evidence that she has suffered a loss of quiet enjoyment at the property; however, I declined to hear that testimony as it is irrelevant to the tenant's obligation to pay rent unless she has been given authorization to do so by the landlord or an Arbitrator and the tenant did not have such authorization.

During the hearing, I gave the parties my preliminary findings that the tenancy was at an end due to unpaid rent and I explored the effective date for the Order of Possession. The landlord requested an Order of Possession effective 10 days after service up to June 28, 2021. The tenant requested at least a month to vacate the rental unit.

### Analysis

Upon review of the decision issued on February 26, 2021 in response to the landlord's Application for Dispute Resolution by Direct Request, I note that the Arbitrator dismissed the landlord's application for an Order of Possession and Monetary Order with leave to reapply. As such, I am satisfied the landlord was at liberty to make another Application for Dispute Resolution for an Order of Possession based on the same issue(s) and I proceed to consider the landlord's request for an Order of Possession made under the Application for Dispute Resolution that is before me.

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. The Act provides very specific and limited circumstances where a tenant has the legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. 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 \$750.00 on the first day of every month and the tenant failed to do so for the month of November 2020 onwards. The tenant did not present any legal basis for not paying rent for November 2020 as the tenant's loss of employment or inability to pay is not a legal basis for withholding rent. Nor, is the landlord's alleged breach of the tenant's quiet enjoyment without authorization to withhold rent from the landlord or an Arbitrator.

I also accept that the tenant was served with a 10 Day Notice on December 1, 2020. The tenant acknowledged she did not pay the outstanding rent for November 2020 and did not file to dispute the 10 Day Notice. Therefore, I find the tenant is conclusively presumed to have accepted the tenancy would end on the effective date of the 10 Day Notice pursuant to section 46(5) of the Act.

While the tenant stated she offered \$1200.00 to the manager in February 2021 that offer is insufficient to cancel the 10 Day Notice as nullification would require the full payment of the outstanding rent within five days of receiving the 10 Day Notice, which the tenant did not accomplish.

In light of the above, I find the tenancy ended effective December 31, 2020 and I find the landlord entitled to regain possession of the rental unit. Considering the tenant has not paid rent for at least 8 months, except a \$300.00 payment, I provide the landlord an Order of Possession effective ten (10) days after service of the order upon the tenant.

I further provide the landlord a Monetary Order for recovery of the \$100.00 filing fee paid for this application.

The landlord had not applied for a Monetary Order for unpaid and/or loss of rent and he remains at liberty to do so under another Application for Dispute Resolution, if he so chooses. Similarly, the tenant is at liberty to file an Application for Dispute Resolution if she seeks damages or losses from the landlord.

### Conclusion

The landlord is provided an Order of Possession effective ten (10) days after service upon the tenant.

The landlord is provided a Monetary Order in the amount of \$100.00 for recovery of the filing fee.

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: June 08, 2021

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Residential Tenancy Branch