



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **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.

On March 24, 2021, the landlord's application was reviewed and considered by the Adjudicator. The Adjudicator determined that this matter should be adjourned to a participatory hearing, scheduled on this date, July 8, 2021 at 11:00 am. The interim Decision should be read in conjunction with this Decision.

In the March 24, 2021, Decision. The Adjudicator made the following finding regarding service of the Direct Request Proceeding,

"The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on March 11, 2021, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the Act, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on March 16, 2021, the fifth day after their registered mailing"

[Reproduced as Written.]

The Adjudicator also made the following order,

"I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. I find that a participatory hearing to be conducted by an

arbitrator appointed under the Act is required in order to determine the details of the landlord's application.

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the Act."

[Reproduced as Written.]

The landlord's agent appeared. As the tenant did not appear service of the interim decision and Notice of Reconvened Hearing was considered.

The landlord's agent testified that they complied with the Order in the interim Decision as they sent the interim decision and the Notice of Reconvened Hearing by registered mail sent on March 29, 2021. The agent provided a Canada post tracking number which I have noted on the covering page of this Decision. Section 90 of the Act determines that a document served in this manner is deemed to have been served on April 3, 2021, five days later. I find that the tenant has been duly served in accordance with the Act. **Neglect or refusal to pick up the package does not override the deemed served provision in the Act.**

#### Issue to be Decided

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

#### Background and Evidence

The landlord's agent testified that the tenant's rent is subsidized, and tenant is required to pay the amount of \$546.00 per month.

The landlord's agent testified that the tenant did not pay any rent from April 2020 to August 2020. Although there was no explanation that their income had been impacted due to the state of emergency. The agent stated the tenant was in rent arrears of \$2,730.00 and were served with a repayment scheduled in September 2020 and was required to pay the amount of \$303.00 for November, December 2020, and January 2021. Filed in evidence is a copy of the rent repayment plan.

The landlord's agent testified that the tenant did not comply with the rent repayment plan as they failed to pay the arrear payments for November, December 2020, and January 2021. This leaves a balance due under the repayment scheduled of \$909.00.

The landlord's agent testified that as a result they served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on January 1, 2021, which was served by registered mail on January 8, 2021. The agent stated the amount of the Notice was in the amount of \$908.00, not \$909.00 because the tenant had a \$1.00 credit on their account. Filed in evidence is a copy of the Notice and a copy of the Canada post tracking number.

The landlord's agent testified that the tenant did not pay the outstanding rent or disputes the Notice. The landlord seeks an order of possession pursuant to section 46(5) and 55 of the Act.

The landlord's agent testified that the tenant has further failed to pay any rent arrears under the repayment plan and in addition rent for May 2021 was not paid. The landlord that the tenant current owes the total amount of \$3,275.00.

The landlord's agent testified that they have been attempting to work with the tenant; however, the tenant is not responding.

### Analysis

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

Based on the testimony of the landlord's agent, I find that the tenant was deemed served with the Notice, on January 13, 2021, by registered mail sent on January 8, 2021. **Refusal or neglect to pickup the package does not override the deemed service provision of the Act.**

The notice informed the tenant that the Notice would be cancelled if the rent of \$908.00 were paid within five days. The notice also explains the tenant had five days to dispute the notice.

The tenant has not paid the outstanding rent arrears and did not apply to dispute the notice and is therefore 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 that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Although I heard testimony from the landlord's agent on the amount of unpaid rent; however, after further reviewing their application, I find the landlord's application did not contain a request for a monetary order for the unpaid rent. The only monetary claim was to recover the cost of the filing fee. Therefore, I cannot grant a monetary order for the unpaid rent as that was not properly before me. The landlord is at liberty to make a new application for the unpaid rent.

As the landlord's application for an order of possession was successful, I find the landlord is entitled to recover the cost of the filing fee. I authorize the landlord to keep \$100.00 from the security deposit in full satisfaction of this award.

### Conclusion

The tenant failed to pay rent arrears, in accordance with the repayment plan and did not file to dispute the notice to end tenancy. The tenant is 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 \$100.00 from the security deposit to recover the cost 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: July 9, 2021

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Residential Tenancy Branch