



# 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 hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for non-payment of rent pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This hearing was reconvened from a non participatory, direct request perceiving, by way of an interim decision dated May 3, 2021 issued by the presiding adjudicator.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:13 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. The landlord's senior director of housing operations ("**AT**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that AT and I were the only ones who had called into this teleconference.

AT testified the landlord served that the tenants with the interim decision, notice of reconvened hearing form, supporting evidence package, and all other required documents via registered mail on May 4, 2021. She provided a Canada Post tracking numbers are this mailing which is reproduced on the cover of this decision. I find that the tenants are deemed served with these packages on May 9, 2021, five days after the landlord mailed it, in accordance with sections 88, 89, and 90 of the Act.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of AT, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting March 1, 2017. Monthly rent is \$628. The tenants did not pay a security deposit. The tenancy agreement states that the tenants were required to pay \$1,200 in monthly rent or an amount equal to 30% of their gross monthly household income, whichever is greater. TA testified that, despite this clause, the tenants are only required to pay \$628 (which is calculated based on their gross monthly income), despite it being less than \$1,200.

The tenancy agreement includes a four-digit number before the street address of the rental unit. This number is not included on any other documents showing the rental unit address that have been submitted into evidence. AT testified that the rental unit is a townhouse, and that it does not have a unit number, it only has a street address (which is the address on all documents other than the tenancy agreement). AT testified that number on the tenancy agreement is an internal unit identifier used by the landlord and does not form part of the rental unit's civic address. She testified that it was included on the tenancy agreement by mistake.

AT testified that the tenants fell into arrears during the COVID-19 pandemic, and were put on a repayment plan, by the emergency regulations put in place at the time. The tenants were to make payments of \$175 per month from November 2020 to July 1, 2021. The tenants made November 2020's installment, then paid \$169 of December 2020. They did not make any subsequent payments. Additionally, the tenants fell behind in the regular rent payments. As of March 1, 2021, the tenants were in rent arrears of \$2,417.

On March 10, 2021, the landlord served the tenants with a notice to end tenancy for non-payment of rent (the "**Notice**") by registered mail. It specified arrears of \$2,417 and providing an effective date of March 26, 2021.

AT testified that the tenants did not dispute the Notice nor did they pay any portion of the arrears within five days. She testified that since the Notice was issued, the tenants have made two payments to the landlord: for \$500 on April 26, 2021; and for \$628 on May 1, 2021. She testified that the landlord accepted these payments for use and occupancy only.

AT testified that the current amount of the tenants' arrears is \$5,133.

### **Analysis**

I accept AT's undisputed testimony in its entirety. I accept her explanation as to why the tenant agreement contains a four-digit number prior to the street address of the rental unit. I find that this number does not form any part of the rental unit's civic address.

I find that the tenants are obligated to pay the landlord monthly rent of \$628 and installments of \$175 per month, pursuant to a repayment plan. I find that they have failed to do this. I find that, as of March 1, 2021, the tenants were \$2,417 in arrears.

I find that the landlord served the tenants with the Notice on March 10, 2021 by registered mail. Pursuant to section 90 of the Act, it is deemed served five days later (March 15, 2021).

Sections 46(4) and (5) of the Act states:

**Landlord's notice: non-payment of rent**

**46(4)** Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

As the Notice is deemed served on March 15, 2021, the tenants must either pay the full amount of the arrears or dispute the Notice by March 20, 2021. The tenants did neither of these.

I find that the Notice complies with the form and content requirements of section 52. As such, I find that the tenancy is conclusively presumed to have ended on the effective date of the Notice, March 26, 2021.

I grant the landlord an order of possession effective two days after the landlord serves this decision and the attached orders on the tenant.

The landlord has not made an application to recover the rental arrears. As such, I decline to make any monetary order. The landlord will have to make a further application to recover the arrears.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover their filing fee from the tenants.

**Conclusion**

Pursuant to sections 72 of the Act, I order that the tenants pay the landlord \$100, representing the reimbursement of the filing fee.

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord at 1:00 pm.

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: August 26, 2021

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Residential Tenancy Branch