



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPE, FFL, OPR-DR

### Introduction

This hearing was convened by way of conference call in response to two Applications for Dispute Resolution filed by the Landlord on July 20, 2021 and August 05, 2021 (the “Applications”). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
- For an Order of Possession based on a One Month Notice to End Tenancy for end of Employment
- To recover the filing fees

The request for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and to recover the filing fee is an adjourned direct request.

The Landlord and Co-landlord appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord and Co-landlord. I told the Landlord and Co-landlord they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord and Co-landlord provided affirmed testimony.

The Landlord provided the correct spelling of the Tenant’s name and the correct rental unit address, both of which are reflected on the front page of this decision.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing packages and Landlord’s evidence.

The Landlord testified that two registered mail packages were sent to the Tenant at the rental unit and that Tracking Numbers 121 and 012 relate to these. The Landlord testified that the packages included the hearing packages and evidence. I looked the tracking numbers up on the Canada Post website. The website shows Tracking Number 121 relates to a package sent September 21, 2021 and that the package was unclaimed and returned to the sender. The website shows Tracking Number 012 was sent August 24, 2021 and that the package was unclaimed and returned to the sender.

The Landlord did not submit documentary evidence of service on File 3874. The Landlord did provide documentary evidence of service on File 5332. The documentary evidence shows that Tracking Numbers 121 and 012 both relate to File 5332.

I note that the Landlord's testimony about service was not clear during the hearing as the Landlord could not provide clear and consistent testimony about what was served when.

I am not satisfied based on the evidence provided that the Landlord served the hearing package for File 3874 on the Tenant. I did not find the Landlord's testimony about service compelling because the Landlord could not provide clear and consistent testimony about what was served when and did not seem to know what was served when or what each tracking number related to. The documentary evidence suggests that only the hearing package for File 5332 was served on the Tenant. Given this, I dismiss File 3874 with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

I accept based on the documentary evidence that the hearing package and evidence for File 5332 were served on the Tenant and that Tracking Number 121 relates to this package. I find based on the Canada Post website that the package was sent September 21, 2021. I am satisfied the Tenant was served in accordance with sections 88(c) and 89(1)(c) of the *Act*. The Tenant cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the package September 28, 2021. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord and Co-landlord were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence on File

5332 and all oral testimony of the Landlord and Co-landlord. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?
2. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

The Landlord testified that the tenancy agreement between the parties started February 10, 2021 and is a month-to-month tenancy. The Landlord testified that rent is \$650.00 per month due on the first day of each month. The Landlord testified that the Tenant paid a \$325.00 security deposit.

Two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were submitted, one dated April 14, 2021 (the "April Notice") and one dated May 13, 2021 (the "May Notice").

The May Notice is not completed properly as it does not include an address under the section stating "I, the Landlord, give you 10 days' notice to move out of the rental unit/site located at".

The Landlord testified that the April Notice was attached to the Tenant's door April 14, 2021.

The April Notice states that the Tenant failed to pay \$650.00 in rent due April 24, 2021. The Landlord acknowledged at the hearing that the Notice should have said April 01, 2021.

The Landlord testified that the Tenant did not pay April rent and this is what is reflected on the April Notice.

The Landlord testified that they have never received rent since issuing the April Notice. This testimony conflicted with a note the Landlord submitted showing the Tenant paid \$500.00 in June, \$500.00 in July and \$500.00 in August. When asked about the note in evidence, the Landlord acknowledged the Tenant paid \$500.00 in June, July and

August and said they made a mistake in their testimony about the Tenant not paying rent since being issued the April Notice. I asked the Landlord to clarify what the next rent payment they received was after the Notice was issued. The Co-landlord testified that the Tenant paid \$650.00 in April or May but that they could not remember the exact date. The Landlord then testified that the Tenant paid \$650.00 on April 20, 2021.

### Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants have failed to pay rent. The relevant portions of section 46 state:

- 46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (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...

Section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy...
- (e) when given by a landlord, be in the approved form.

The May Notice is not a valid notice to end tenancy because it does not include the rental unit address in the relevant section under the statement “I, the Landlord, give you 10 days’ notice to move out of the rental unit/site located at”. The May Notice does not comply with sections 46(2) or 52 of the *Act*. Given this, the Landlord is not entitled to an Order of Possession based on the May Notice and this request is dismissed without leave to re-apply.

I accept that the April Notice was posted to the door of the rental unit April 14, 2021 based on the Landlord’s testimony and the photos in evidence. The Tenant was served with the April Notice in accordance with section 88(g) of the *Act*.

There is no evidence before me about when the Tenant received the April Notice and therefore the deeming provision in section 90(d) of the *Act* applies and the Tenant is deemed to have received the April Notice April 17, 2021.

Pursuant to section 46(4)(a) of the *Act*, the Tenant was permitted to pay the overdue rent noted on the April Notice within five days of receiving the April Notice. The Landlord testified that the Tenant paid \$650.00 on April 20, 2021. April 20, 2021 was within five days of the Tenant being deemed to have received the April Notice. Therefore, the Tenant cancelled the April Notice pursuant to section 46(4) of the *Act*. Given this, the Landlord is not entitled to an Order of Possession based on the April Notice and this request is dismissed without leave to re-apply.

Given the Landlord was not successful in the Application, the Landlord is not entitled to reimbursement for the \$100.00 filing fee and this request is dismissed without leave to re-apply.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 19, 2021

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Residential Tenancy Branch