



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNU-DR, OPU-DR, FFL

### Introduction

The tenant applied on July 26, 2021 to dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46 of the *Residential Tenancy Act* (“Act”), the Notice of which was served and issued by the tenant’s former landlords.

On October 17, 2021, the current landlord served a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant (the “Second Notice”) and applied for an order of possession and monetary order for unpaid rent on November 9, 2021.

Only the current landlord, along with an interpreter (who, after being affirmed, provided all of the oral evidence and submissions), attended the hearing on November 25, 2021 at 9:30 AM. The tenant did not attend the hearing, which ended at 9:46 AM. Given that the current landlord assumed the tenancy when they purchased the property and given that the former landlords did not attend the hearing, only the current landlord is named as an applicant and respondent on this decision. The current landlord is hereafter referred to simply as “the landlord.”

### Issue

Is the landlord entitled to an order of possession and a monetary order?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on May 1, 2021 and monthly rent, which is due on the first day of the month, is \$1,350.00. In addition, the tenant is required to pay \$100.00 for utilities on the first day of the month. A copy of a written tenancy agreement was in evidence.

On October 17, 2021, the landlord served the Second Notice on the tenant. Copies of the Second Notice were (1) left in the tenant's mailbox, and (2) taped to the door of the rental unit. The landlord's testimony confirmed this information, which was also reflected in a Proof of Service document tendered into evidence. The Second Notice indicated that the tenant failed to pay rent in the amount of \$4,200.00 that was then owing on October 1, 2021. And, that they failed to pay utilities in the amount of \$700.00 that was due and owing on October 1, 2021.

It should be noted, and this was confirmed by the landlord and his agent, that the tenant has not made an Application for Dispute Resolution disputing the Second Notice.

The landlord's agent confirmed that as of November 1, 2021, the tenant owes an additional \$1,350.00 in rent for November, and, an additional \$100.00 for utilities for November, for a total of \$6,350.00. In addition, the landlord seeks \$100.00 to pay for the cost of the application filing fee.

### Analysis

A landlord may issue a notice to end tenancy under section 46 of the Act when a tenant has not paid rent in accordance with the tenancy agreement and section 26 of the Act. In this dispute, the Second Notice was issued October 17, 2021 and deemed received on October 20, 2021 (see section 90 of the Act regarding deemed received dates).

Sections 46(4) and (5) state the following:

- (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.

In this case, the Second Notice was posted on the door and left in the mailbox and is presumed to have been received by the tenant on the third day after it was posted, as per section 90(c) of the Act. The tenant did not pay rent or make an application for dispute resolution within 5 days after receiving the notice. As such, as per section 46(5) of the Act, I find the tenant is conclusively presumed to have accepted the tenancy ended on October 31, 2021. The tenancy is therefore ended.

Pursuant to section 55(2)(b) of the Act, the landlord is hereby granted an order of possession of the rental unit. A copy of the order of possession is issued in conjunction with this decision, to the tenant. The order of possession must be served by the landlord, or an agent of the landlord, on the tenant.

In respect of the rent arrears and unpaid utilities, taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for \$6,350.00.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in his application, I grant him \$100.00 in compensation to cover the cost of the filing fee. A total of \$6,450.00 is therefore awarded to the landlord.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain the tenant’s security deposit of \$750.00 in partial satisfaction of the above-noted award.

Pursuant to section 55(4)(b) of the Act, the landlord is granted an order requiring the tenant to pay outstanding rent and utilities in the amount of \$5,700.00. A copy of this order is also issued in conjunction with this decision, to the landlord.

As the Second Notice was conclusively presumed to have been accepted by the tenant, the first Notice issued by the previous landlords is moot.

Conclusion

**I HEREBY:**

1. grant the landlord's application;
2. dismiss the tenant's application, without leave to reapply;
3. grant the landlord an order of possession, which must be served on the tenant and which is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court; and,
4. grant the landlord a monetary order in the amount of \$5,700.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court.

This decision is final and binding and is made on authority delegated to me by the Director under section 9.1(1) of the Act.

Dated: November 25, 2021

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Residential Tenancy Branch