



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The application was made by way of the Direct Request process which was adjourned to this participatory hearing.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord testified that the tenant was served with the Dispute Resolution package by registered mail on November 26, 2021 and was permitted to provide proof of such service after the hearing had concluded. I now have a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt addressed to the tenant, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord also testified that the tenant was served with all evidence by registered mail on January 7 and January 13, 2022 and has provided proof of such service. All evidence of the landlord has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 15, 2021 was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

The landlord testified that this fixed-term tenancy began on April 6, 2018 and reverted to a month-to-month tenancy after April 5, 2019, and the tenant still resides in the rental unit. The landlord took over as management from the owner in 2020. Rent in the amount of \$1,303.00 per month was originally payable under the tenancy agreement, which was increased by \$33.00 per month on January 26, 2019 to \$1,336.00 effective April 15, 2019. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$651.50, as well as a pet damage deposit in the amount of \$200.00 which was paid by installments during the tenancy. Both deposits are still held in trust by the landlord. The rental unit is an apartment in a large complex, and a copy of the tenancy agreement has been provided for this hearing.

On November 15, 2021 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy of the Notice has been provided as evidence for this hearing and it is dated November 15, 2021 and contains an effective date of vacancy of November 29, 2021 for unpaid rent in the amount of \$1,336.00 that was due on November 1, 2021. A photograph of the 3-page document posted to the door of the rental unit has also been provided.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice, and has not paid any rent since the Notice was issued. The tenant is now in arrears of rent the sum of \$5,344.00 for the months of November, 2021 through February, 2022.

### Analysis

The *Residential Tenancy Act* specifies that a tenant must pay the rent in full or dispute a notice to end the tenancy within 5 days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice). If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out within 10 days of receiving the Notice. In this case, I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*. The landlord testified that the tenant has not paid the rent and arrears have accumulated. The landlord also testified that the tenant has not served the landlord with an Application for Dispute Resolution, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the tenancy,

and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

With respect to the rental arrears, the landlord has not applied for a monetary order for the unpaid rent. The *Residential Tenancy Act* specifies as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

In this case, the tenant did not dispute the Notice, and therefore that section does not apply. The landlord is at liberty to apply for recovery of the unpaid rent.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is final and binding and may be enforced.

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: February 04, 2022

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Residential Tenancy Branch