



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FSJD HOLDINGS LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

On October 15, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

D.C. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing at any point during the 23-minute teleconference. At the outset of the hearing, I informed D.C. that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term, and she provided a solemn affirmation.

She advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on December 1, 2021 (the registered mail tracking number is noted on the first page of this Decision). Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been deemed to have received the Landlord’s Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

D.C. advised that the tenancy started on March 1, 2021 as a fixed term tenancy ending on February 28, 2022. However, the tenancy ended when the Landlord took over vacant possession of the rental unit on December 22, 2021 due to abandonment. She stated that the rent was established at an amount of \$2,250.00 per month and that it was due on the first day of each month, despite the tenancy agreement stating that it was due on the 15<sup>th</sup> as this was a mistake. A security deposit of \$1,125.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on August 25, 2021 by being posted to the Tenant's door, and she included a signed proof of service form to corroborate service upon the Tenant.

She stated that the Tenant did not pay any rent from April 2021 onwards. Thus, the Notice was served for rent owing on August 1, 2021 in the amount of \$11,250.00. She referenced documentary evidence submitted to support this position. She submitted that she did not serve the Notice earlier as the Tenant informed her that she was sick and/or that she had banking issues, and the Landlord felt empathy for the Tenant. She then advised that the Tenant has not paid any rent for the subsequent months after service of the Notice.

Given that vacant possession of the rental unit has been returned, granting an Order of Possession is a moot point. However, as the Tenant has not complied with the *Act*, the Landlord is still seeking a Monetary Order for the arrears that the Tenant has not paid to date.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing this Notice, I am satisfied that it is a valid Notice.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant would have been deemed to have received the Notice on August 28, 2021. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was deemed received on August 28, 2021, the Tenant must have paid the rent in full or disputed the Notice by September 2, 2021 at the latest. The undisputed evidence is that the Tenant did not pay the rent in full or dispute this Notice. As there is no evidence before me that the Tenant had a valid reason under the *Act* for withholding the rent, I am satisfied that she breached the *Act* and jeopardized her tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. However, as the Tenant has given up vacant possession of the rental unit already, an Order of Possession need not be granted.

In addition, as the Tenant was in a fixed term tenancy until February 28, 2022, but abandoned the rental unit on December 22, 2021, I am satisfied that the Landlord would have had little opportunity to re-rent the unit for January 1, 2022. As such, I am satisfied that the Landlord should be entitled to January 2022 rent.

However, the Landlord does have a duty to mitigate their loss and re-rent the unit as quickly as possible. Given that the Landlord did not take steps to re-rent the unit until late January 2022, I do not find that the Landlord adequately mitigated their loss. As such, I am not satisfied that the Landlord should be entitled to February 2022 rental loss. Consequently, I grant the Landlord a monetary award for the rental arrears from April 2021 to January 2022 only.

As the Landlord was successful in their Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenants to the Landlord**

Item	Amount
Rental arrears for April 2021	\$2,250.00
Rental arrears for May 2021	\$2,250.00
Rental arrears for June 2021	\$2,250.00
Rental arrears for July 2021	\$2,250.00
Rental arrears for August 2021	\$2,250.00
Rental arrears for September 2021	\$2,250.00
Rental arrears for October 2021	\$2,250.00
Rental arrears for November 2021	\$2,250.00

Rental arrears for December 2021	\$2,250.00
Rental arrears for January 2022	\$2,250.00
Filing Fee	\$100.00
Security deposit	-\$1,125.00
<b>Total Monetary Award</b>	<b>\$21,475.00</b>

### Conclusion

Based on the above, the Landlord is provided with a Monetary Order in the amount of **\$21,475.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 1, 2022

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Residential Tenancy Branch