



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPR, FFL**

### Introduction

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

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, HHC, and Translator, JH, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants did not attend the hearing. 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 the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord and Translator testified that they were not recording this dispute resolution hearing.

The Landlord served the 10 Day Notice on the Tenants on January 2, 2022 by placing the document in their mailbox. I find that the 10 Day Notice was deemed served on the Tenants on January 5, 2022 pursuant to Sections 88(f) and 90(d) of the Act.

The Landlord stated that she and her son went to the Tenants' home to personally serve the Tenants with the Notice of Dispute Resolution Proceeding package after

receiving the package from the RTB on February 24, 2022 (the “NoDRP package”). The Landlord testified that the Tenant, because she was sick, did not open the door. The Landlord’s son and the Tenant had a conversation through the door, and the Landlord’s son left the NoDRP package in the mail slot after speaking with the Tenant. The Landlord witnessed this exchange. I find that the Tenants were sufficiently served with the NoDRP package on February 27, 2022, in accordance with Section 71(2) of the Act.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for the 10 Day Notice?
2. Is the Landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord confirmed that this periodic tenancy began on September 15, 2021. Monthly rent is \$2,400.00 payable on the first day of each month. A security deposit of \$1,200.00, and pet damage deposit of \$1,200.00 were collected at the start of the tenancy and are still held by the Landlord.

The Landlord seeks an Order of Possession for unpaid rent of \$2,400.00 from January 2022 rent. The effective date of the 10 Day Notice was blank. The Landlord issued a second 10 Day Notice on February 16, 2022 for unpaid rent of \$1,200.00. The effective date on this 10 Day Notice was blank.

On January 2, 2022, the Tenants paid \$1,300.00 to the Landlord towards her outstanding January rent amount owing. On January 7, 2022, the Landlord testified that the Tenants paid an additional \$1,100.00 which represents the balance of January’s rent to the Landlord.

The Landlord wants to end this tenancy and seeks an Order of Possession.

## Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenants' absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

For the Tenants' benefit, Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act is the relevant part of the legislation in this matter, it 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.*

...

The Landlord's 10 Day Notice was deemed served on January 5, 2022. The Landlord's 10 Day Notice did not include an effective date for the notice. Section 52 of the Act states:

## **Form and content of notice to end tenancy**

- 52** *In order to be effective, a notice to end a tenancy must 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) (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
  - (f) when given by a landlord, be in the approved form. (emphasis mine)*

The Landlord's evidence was that the Tenants paid \$1,300.00 on January 2, 2022 after receiving the 10 Day Notice. The Tenants then paid \$1,100.00 on January 7, 2022, the balance of January's rent. I find the Tenants paid the outstanding rent amount within the 5 days after they received the 10 Day Notice. Pursuant to Section 46(4)(a) of the Act, if the Tenants pay the overdue amount of rent within 5 days after receiving the 10 Day Notice, the notice has no effect.

Further, I find that the Landlord's 10 Day Notice did not comply with the form and content requirements of Section 52 of the Act as the Landlord did not include the effective date of the 10 Day Notice. The 10 Day Notice issued on February 16, 2022 also omitted an effective date. I find that the 10 Day Notices are cancelled and I dismiss the Landlord's Order of Possession application without leave to re-apply. The tenancy will continue until ended in accordance with the Act.

As the Landlord was unsuccessful in their claim, they must bear the cost of the application filing fee.

## **Conclusion**

The Landlord's 10 Day Notice dated January 2, 2022 has no effect and is cancelled. This tenancy shall continue until it is ended in accordance with the Act.

The Landlord's Order of Possession application is dismissed.

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: June 02, 2022

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Residential Tenancy Branch