



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

**Dispute Codes**     OPR-DR, MNR-DR, FFL

### **Introduction**

The matter originally proceeded by way of a Direct Request Proceeding on June 6, 2022, in which a decision is made based solely on the written evidence submitted by the landlord.

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

On June 21, 2022, the tenant was granted their application for review consideration, and the Decision and Orders dated June 6, 2022 were suspended until the Review Hearing scheduled for September 26, 2022.

While the tenant and their witnesses attended the hearing by way of conference call, the landlord did not. I waited until 1:53 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant and their witnesses were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant, their witnesses, and I were the only ones who had called into this teleconference.

The parties were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. All parties confirmed that they understood.

The tenant testified that they had served the landlord on June 24, 2022 by dropping off the Review Consideration Decision and Notice of Hearing package with the receptionist. The tenant testified that they attended on August 25, 2022 and September 13, 2022 in the same manner to drop off their written evidence. Accordingly, I find the landlord duly served with the tenant's documents in accordance with sections 88 of the *Act*.

The tenant denies receiving a copy of the landlord's application for Direct Request Proceeding, nor a copy of the 10 Day Notice to End Tenancy dated April 8, 2022. The tenant testified that they only became aware of the 10 Day Notice and landlord's application for an Order of Possession and Monetary Order when the landlord served the tenant with the Orders after June 5, 2022. I note that the landlord provided proof of service containing receipts and tracking information for both the 10 Day Notice, as well as their application for Direct Request Proceedings. Although the tenant may not have received the packages, I find that the landlord did provide sufficient proof to support that both packages were served in accordance with sections 88 and 89 of the *Act*. In accordance with section 90 of the *Act*, I find the tenant deemed served with both packages 5 days after mailing.

### **Issue(s) to be Decided**

Should the Decision and Orders dated June 6, 2022 be confirmed?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on July 1, 2014. The tenant testified that their housing is subsidized, and paid directly by income assistance every month in the amount of \$472.00. The economic rate is \$694.00 for this tenancy.

The tenant testified that she was hospitalized for a three week period starting on February 9, 2021, and was unable to receive or respond to any correspondence during that period. The tenant's social worker during that time, CK, attended the hearing to confirm this. The tenant testified that on February 4, 2022 they received an email from the landlord's accountant informing the tenant that they owed a balance in rent. The tenant responded that they were confused as they never received any previous correspondence about any increases or changes in the monthly rent owed.

The tenant testified that they were unaware of any changes or outstanding rent owed to the landlord, and disputes the validity of the 10 Day Notice dated April 8, 2022. The tenant testified that they were unaware that there was a problem until after the landlord had obtained an Order of Possession following the direct request proceeding on June 6, 2022. The tenant testified that they are extremely confused as they received a further letter addressed to the tenant dated July 26, 2022, after the effective date of the Order of Possession, informing the tenant that their rent would increase as of November 1, 2022.

### **Analysis**

Section 26 of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

**26** (1) 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* states that “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.”

In this case, I find that there is conflicting testimony as to the amount of rent that was due on April 8, 2022. I am not satisfied that the landlord had provided sufficient evidence to support that the tenant was informed that they no longer qualified for subsidized housing, and that they were responsible for the increase in rent referenced in the landlord’s application, and on the 10 Day Notice. I find that the landlord’s own letter dated July 26, 2022 adds further doubt as to the status of this tenancy in relation to unpaid rent as the tenant received this letter over a month after the landlord had obtained the Order of Possession on June 6, 2022 following the Direct Request Proceeding.

No one representing the landlord attended this Review Hearing to clarify the above issues, nor did the landlord provide any additional written evidence to support the validity of the 10 Day Notice, and whether the tenant owes additional rent as requested in the letter dated February 4, 2022.

I am not satisfied that the landlord had provided sufficient evidence to support that the tenant owed any outstanding rent on April 8, 2022. I am not satisfied that the 10 Day

Notice dated April 8, 2022 is valid. Pursuant to section 82(3) of the *Act*, the tenant's request to set aside the Order of Possession and Monetary Orders dated April 8, 2022 is granted. The 10 Day Notice dated April 8, 2022 is cancelled and is of no force or effect. This tenancy is to continue until ended in accordance with the *Act*.

**Conclusion**

I am not satisfied that the 10 Day Notice dated April 8, 2022 is valid. Pursuant to section 82(3) of the *Act*, the tenant's request to set aside the Order of Possession and Monetary Orders dated April 8, 2022 is granted. The 10 Day Notice dated April 8, 2022 is cancelled and is of no force or effect.

I order that this tenancy continue until ended in accordance with the *Act*.

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: September 26, 2022

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Residential Tenancy Branch