



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR

### Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on August 30, 2022, in which the Landlords sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on July 15, 2022 (the "Notice").

The hearing was conducted by teleconference at 1:30 p.m. on October 27, 2022. Only the Landlords called into the hearing. The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:45 p.m. Additionally, 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 Landlords and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlords' hearing package. The Landlord C.P. testified that they served the Tenant with the Notice of Hearing and the Application on September 15, 2022 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of September 20, 2022 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlords' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlords and relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

1. Has the Tenant breached the *Act* or tenancy agreement, entitling the Landlords to an Order of Possession?

### Background and Evidence

The Landlord, C.P. testified as follows. She confirmed that the Tenant is the Landlords' 39 year old daughter. The parties do not have a written tenancy agreement. C.P. stated that the Tenant moved into the rental unit in 2015 and began paying monthly rent of \$500.00 per month on the first of the month. The Tenant continued to pay this sum for five years until May 1, 2020, when she stopped paying.

C.P. stated that they repeatedly asked the Tenant to pay rent, and the Tenant gave excuse after excuse. She said that they tried to work with her to help her, because she is their daughter, but after so many years they felt no other option but to issue the Notice. The Notice indicated that the sum of \$500.00 was outstanding for rent. C.P. clarified that she wrote this figure down as she understood the form to be asking her what monthly rent was, not what was outstanding as of the time the notice was issued.

C.P. testified that the Notice was served on the Tenant by email, express post as well as posting to the rental unit on July 15, 2022.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

C.P. confirmed the Tenant did not pay the outstanding rent, nor did she apply to dispute the Notice.

### Analysis

The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

#### **Landlord's notice: non-payment of rent**

**46** (1)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.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.

(6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

A tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads 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.

There are only four occasions when a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the parties entered into an oral tenancy agreement whereby the Tenant would pay rent of \$500.00 per month. I accept the Landlord's testimony that the Tenant moved into the rental unit in 2015 and paid monthly rent of \$500.00 per month until May of 2020 when the Tenant stopped paying rent. I further find the Tenant had no such legal authority to withhold rent.

I therefore find that the Tenant failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*.

I accept the Landlord's testimony that she served the Notice on the Tenant in numerous ways on July 15, 2022, but firstly by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later, such that I find the Tenant was served as of July 18, 2022. In the event this is incorrect, I accept the Landlord's testimony that they also served the Tenant by mail; which according to section 90 would result in the Tenant being deemed served five days later, or July 20, 2022. In either case I find the Tenant was duly served with the Notice.

I accept the Landlord's evidence that the Tenant did not pay the outstanding rent and did not apply to dispute the Notice within the five days required by section 46(4) and is therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I have reviewed the Notice and find that it complies with section 52 in terms of form and content; consequently, and pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

The Landlords did not apply for monetary compensation from the Tenant. They are at liberty to apply for compensation for unpaid rent as well as any future losses should the Tenant not vacate the rental unit as required.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlords are granted an Order of Possession and is at liberty to apply for monetary compensation for unpaid rent and any other losses associated with this tenancy.

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: November 4, 2022

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Residential Tenancy Branch