



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

**OPU-DR MNU-DR FFL**

### Introduction

This hearing was reconvened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent and/or utilities pursuant to section 55; and
- authorization to recover the filing fee for the Application from the Tenants pursuant to section 72.

The Tenants did not attend this hearing. I left the teleconference hearing connection open until 9:59 am in order to enable the Tenants to call into this teleconference hearing scheduled for 9:30 am. An agent ("JX") for the Landlord attended the hearing and was 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 were provided in the Notice of Dispute Resolution Proceeding this adjourned hearing ("Adjourned NDRP"). I also confirmed from the teleconference system that JX and I were the only ones who had called into this teleconference.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding ("Original Hearing"). In an interim decision dated July 18, 2022 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Landlord. As a result, this hearing was scheduled and came on for hearing on November 22, 2022, to consider the Landlord's application. The Notice of Dispute Resolution Proceeding for this adjourned hearing ("Adjourned NDRP")

was enclosed with the Interim Decision. The Landlord was instructed to serve the Adjourned NDRP, the Interim Decision and all other required documents, upon each of the Tenants within three days of receiving the Interim Decision, in accordance with section 89 of the Act.

JX testified the Landlord served the Adjourned NDRP were served on each of the Tenants in-person on July 21, 2022. Based on the undisputed testimony of JX, I find each of the Tenants was served with the Adjourned NDRP in accordance with the provisions of section 89 of the Act.

JX testified the Notice of Dispute Resolution Proceeding for the Original Hearing and the Landlord's evidence (collectively the "Original NDRP Package") was served on each of the Tenants by registered mail on June 22, 2022. JX submitted into evidence two signed Proofs of Service certifying the Original NDRP Package was served on each of the Tenants together with the Canada Post Receipt and tracking numbers for service. Based on the undisputed testimony of JX and the Proofs of Service, I find the Original NDRP Package was served on each of the Tenants pursuant to sections 88 and 89 of the Act.

JX stated the Tenants did not serve any evidence on the Landlord for these proceedings.

### Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- a monetary order for unpaid rent?
- recover the filing fee for the Application from the Tenants?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

JX submitted into evidence a copy of the tenancy agreement and addendum dated October 22, 2019 (collectively the "Tenancy Agreement") between the Landlord and Tenants. The Tenancy Agreement stated the tenancy commenced on November 1, 2019, with a fixed term ending October 31, 2020, with rent of \$2,600.00 payable on the

1<sup>st</sup> day of each month. The Tenants were required to pay a security deposit of \$1,300.00 by November 1, 2019. JX stated the Tenants paid the security deposit and that the Landlord was holding it in trust for the Tenants. Based on the undisputed testimony of JX, and the Tenancy Agreement submitted into evidence, I find there is a tenancy between the Landlord and Tenants and that I have jurisdiction to hear the Application.

JX submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated March 28, 2022 ("10 Day Notice"). JX stated the 10 Day Notice was served on the Tenants' door on April 8, 2022. JX submitted into evidence a signed and witnessed Proof of Service on Form RTB-34 to corroborate his testimony. Based on the undisputed testimony of JX, and the Proof of Service submitted into evidence, I find the Tenants were served with the 10 Day Notice in accordance with the provisions of section 88 of the Act.

The 10 Day Notice stated the Tenants had rental arrears of \$14,100.00 and utilities of \$2,895.00 as of March 1, 2022. When I asked, JX was unable to provide me with the section in the Tenancy Agreement that required the Tenants to pay the Landlord for utilities. JX stated the Landlord was unaware of the Tenants making an application for dispute resolution to dispute the 10 Day Notice. For the reasons set out below under the heading "Analysis", I have not provided a breakdown of the calculations used by the Landlord to arrive at the rental arrears and utilities claimed by the Landlord to be owed by the Tenants.

### Analysis

#### **1. Landlords' Claim for Order of Possession**

Sections 46(1) and 46(4) of the Act state:

- 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].*
- (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.

[emphasis added in italics]

The undisputed testimony of XY was the 10 Day Notice was served on the Tenants' door on April 8, 2022. Pursuant to section 90, the Tenants were deemed to have received the 10 Day Notice on April 11, 2021. Pursuant to section 46(4) of the Act, the Tenants had until April 18, 2022, being the next business day after the expiry of the 10-day dispute period, to make an application for dispute resolution to dispute the 10 Day Notice.

Section 52 of the Act states:

- 52 In order to be effective, a notice to end a tenancy must be 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,
  - (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
  - (e) *when given by a landlord, be in the approved form.*

[emphasis in italics added]

I have reviewed the 10 Day Notice and find the Landlord used an obsolete Form RTB-30. As such, the 10 Day Notice was not in the approved form when served by the Landlord on the Tenants. Furthermore, the Form RTB-30 given by the Landlord does not have the same amount of information for landlords and tenants that the current Form RTB-30 provides. As such, the 10 Day Notice does not comply with section 52 of the Act and, therefore, the 10 Day Notice was not effective when it was served on the Tenants. As the 10 Day Notice does not comply with section 52 of the Act, the requirement of section 46(2) of the Act has not been satisfied and the conclusive presumption provisions of section 46(5) do not apply. Based on the foregoing, I find the Landlord has not proven, on a balance of probabilities, that he is entitled to an Order of Possession and a monetary order for unpaid rent and/or utilities pursuant to subsections 55(4)(a) and 55(4)(b) of the Act. Based on the foregoing, I order the Application to be dismissed in its entirety without leave to reapply.

#### Conclusion

The Application is dismissed in its entirety without leave to reapply.

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 24, 2022

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Residential Tenancy Branch