



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent.

The landlord appeared at the hearing; however, there was no appearance on part of the tenants despite leaving the teleconference call open at least 30 minutes.

Since the tenants did not appear, I explored service of the proceeding documents upon the tenants. The landlord testified that she sent the proceeding documents to each named tenant via registered mail on September 12, 2022. The landlord orally provided the registered mail tracking numbers (which I have recorded on the cover page of this decision) and a search of the tracking numbers showed the registered mail was successfully delivered on September 14, 2022. I am satisfied the tenants were duly served with notification of this proceeding and I continued to hear from the landlord without the tenants present.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

### Background and Evidence

The landlord testified the parties entered into a verbal tenancy agreement that started on February 1, 2021. The tenants did not pay a security deposit. The tenants were required to pay rent of \$1650.00 on the first day of every month. The landlord testified that rent had been coming from the Ministry after the landlord signed a Shelter Information form, but that was subsequently cancelled by the tenant, and by e-transfer.

The landlord received only a partial payment of \$570.00 for the month of August 2022 and on August 11, 2022 the landlord sent a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") to the tenants via registered mail. The registered mail was successfully delivered on August 15, 2022 according to a search of the registered mail tracking number. The 10 Day Notice indicates rent of \$1080.00 was outstanding as of August 1, 2022 and a stated effective date of August 26, 2022.

The tenants did not vacate the rental unit and paid \$1000.00 to the landlord on September 6, 2022. The landlord stated she forgave the outstanding \$80.00 balance and gave the tenant a receipt indicating the money was being accepted "for use and occupancy only".

Subsequent partial rent payments received from the tenant were also accepted "for use and occupancy only" as indicated on the receipts issued by the landlord.

The landlord testified that she received a very small rent payment for December 2022 and no rent was received for January 2023. The landlord testified that she was willing to accept a lesser amount of rent for January 2023, in the amount of \$788.00, with a view to working with the tenants but the tenants did not pay anything for January 2023.

The landlord requested that she be provided an Order of Possession effective at the end of January 2023.

Evidence provided by the landlord included a copy of the 10 Day Notice, a signed Proof of Service indicating the 10 Day Notice was sent via registered mail on September 11, 2022 and a registered mail receipt dated September 11, 2022 (registered mail tracking number provided on the cover page of this decision).

### Analysis

This application is being filed under section 55(2)(b) of the Act, which provides:

- [2]A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
  - (b)a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

I proceed to consider the landlord's entitlement to an Order of Possession under section 55(2)(b).

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. Section 1 of the Act defines tenancy agreement to include tenancy agreements entered into orally or implicitly. I accept the unopposed evidence before me that the tenants were required to pay rent of \$1650.00 per month based on their oral agreement, although the landlord was willing to accept lesser amounts at times with a view to working with the tenants.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

Based on the evidence before me, I find the tenants were served with a 10 Day Notice when it was successfully delivered on August 15, 2022. Upon review of the 10 Day Notice, I am satisfied it is in the approved form and duly completed. Accordingly, I find the tenants had five days from August 15, 2022, or until August 20, 2022, to either pay the outstanding rent to nullify the 10 Day Notice or file an Application for Dispute Resolution to dispute the 10 Day Notice. Since the tenants did neither I find the tenants were conclusively presumed to have accepted the tenancy would end on August 26, 2022.

Considering the landlord issued receipts for "use and occupancy only", the landlord filed and served this Application for Dispute Resolution putting the tenants on notice she was seeking an Order of Possession and I did not hear any arguments from the tenants concerning re-instatement, I am satisfied the tenancy was not reinstated.

In light of the above, I find the landlord entitled to an Order of Possession under section 55(2)(b). With the landlord's copy of this decision, I provide the landlord with an Order of Possession effective on January 31, 2023, as requested.

Conclusion

The landlord's application for an Order of Possession is granted. The landlord is provided an Order of Possession effective January 31, 2023.

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: January 13, 2023

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Residential Tenancy Branch