



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

## DECISION

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

### **Introduction**

This hearing dealt with two applications of the landlord pursuant to the *Residential Tenancy Act* (the Act). The first for:

- an order of possession due to the tenant giving written notice to end the tenancy pursuant to section 55.

And the second for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$1,001 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (LE) attended the hearing on the landlord's behalf. The tenant did not attend the hearing.

EL testified that the landlord served the tenant with the two notices of dispute resolution proceeding packages and supporting documentary evidence on September 8, 2023 and November 17, 2023 respectively. The landlord provided Canada Post tracking numbers confirming these mailings. The tenant is deemed served with these documents five days after they were mailed, in accordance to sections 88, 89, and 90 of the Act.

At the outset of the hearing, LE testified that the tenant has paid her outstanding rent, and the landlord no longer seeks a monetary order. However, the landlord still seeks an order of possession based on late payment of rent, as the rent was paid one month after it was due. Accordingly, I dismiss the landlord's claim for a monetary order, without leave to reapply.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession;
- 2) recover the filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of LE, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The tenant and the prior landlord entered into a written tenancy agreement starting August 1, 2016. On January 1, 2018, the landlord took over the tenancy agreement. The monthly rent is currently \$1,001, payable on the first day of each month. The tenant paid a security deposit of \$440 at the start of the tenancy, which the landlord holds in trust for the tenant.

LE testified that the tenant gave the landlord written notice to end the tenancy on August 1, 2023. It submitted a copy of this notice into evidence. It specified that the tenancy would end in 30 days. She testified that the tenant did not move out of the rental unit in accordance with this notice, and that the landlord did not accept any retraction of the notice.

LE testified that the tenant paid rent for September and October 2023, but that the landlord accepted these rent payments for "use and occupancy only", and specified this on the rent receipts issued which were submitted into evidence. The tenant did not pay any rent on November 1, 2023 and the landlord issued a 10 day notice to end tenancy for non payment of rent (the 10 Day Notice) by registered mail the following day. The landlord submitted a Canada Post tracking number supporting this mailing. The 10 Day Notice specified an effective date of November 12, 2023. The tenant did not dispute the 10 Day Notice, and only paid the rental arrears on December 1, 2023. LE testified that the tenant is not currently in any arrears.

### **Analysis**

Section 55(2)(a) of the Act allows a landlord to apply for an order of possession if the tenant has given a notice to end tenancy. Based on the testimony of LE, corroborated by the documents submitted into evidence, I find that the tenant gave a notice to end tenancy on August 1, 2023, which was effective 30 days later. As such, I find that the tenancy ended on that date.

The landlord is therefore entitled to an order of possession.

Additionally, I find that the landlord served the tenant within 10 Day Notice on November 2, 2023, and the tenant neither disputed this notice, nor paid the arrears within five days. As such, per section 46(5), the tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice (Nov 17, 2023).

The landlord is entitled to an order of possession on this basis as well.

At the hearing, LE stated that the landlord seeks an order of possession effective December 31, 2023, as the tenant has paid rent for December. I will accede to this request.

Per section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenant.

Per section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of the monetary orders made above.

The landlord must handle the balance of the security and all accrued interest in accordance with the Act.

### **Conclusion**

Per to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by December 31, 2023 at 1:00 pm.

I order the landlord to serve a copy of this decision and attached within three days of receiving it from the Residential Tenancy Branch.

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: December 7, 2023

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Residential Tenancy Branch