



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAKER CREEK HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

OPR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 30, 2019 (the "Application"). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 07, 2019 (the "Notice").

The Agent attended the hearing for the Landlord with M.D. to assist. Nobody attended the hearing for the Tenant. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Agent provided the correct name of the Landlord which is reflected in the style of cause.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence. The Agent testified that the hearing package and evidence were served on the Tenant in person at the rental unit on October 01, 2019.

Based on the undisputed testimony of the Agent, I find the Tenant was served with the hearing package and evidence in accordance with sections 59(3), 88(a) and 89(2)(a) of the *Residential Tenancy Act* (the "Act"). I find the Tenant was served in sufficient time to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

### Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

### Background and Evidence

The Agent testified as follows. There is a verbal tenancy agreement between the Landlord and Tenant in relation to the rental unit. The tenancy started in June or July of 2019 and is a month-to-month tenancy. Rent is \$550.00 per month due of the first day of each month. The Tenant did not pay a security deposit or pet damage deposit.

The Notice states the Tenant failed to pay \$550.00 in rent that was due September 01, 2019. The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Agent. It has an effective date of September 16, 2019.

The Agent testified that both pages of the Notice were posted to the door of the rental unit September 07, 2019. The Landlord submitted a Proof of Service signed by a witness confirming this.

The Agent testified as follows. The Tenant failed to pay rent for September. This is reflected on the Notice. The Tenant did not pay any rent since the Notice was issued. The Tenant did not have authority under the *Act* to withhold rent.

The Agent was not aware of the Tenant disputing the Notice.

### Analysis

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 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...
- (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...

Based on the undisputed testimony of the Agent, I accept the following. That there is a verbal tenancy agreement between the Landlord and Tenant in relation to the rental unit. That the Tenant is required to pay \$550.00 in rent by the first day of each month pursuant to the verbal tenancy agreement. That the Tenant did not have authority under the *Act* to withhold September rent. I note that there is no evidence before me that the Tenant did have authority under the *Act* to withhold September rent.

Given the above, I find the Tenant was required to pay \$550.00 for September rent by September 01, 2019 pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of the Agent, I accept that the Tenant failed to pay rent for September. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve the Tenant with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Agent and Proof of Service, I find the Tenant was served with the Notice on September 07, 2019 in accordance with section 88(g) of the *Act*. The Tenant is deemed to have received the Notice September 10, 2019 pursuant to section 90(c) of the *Act*.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on September 10, 2019 to pay the outstanding rent or dispute the Notice under section 46(4) of the *Act*. I accept the undisputed testimony of the Agent that the Tenant did not pay any rent since the Notice was issued. I also accept the undisputed testimony of the Agent that she is not aware of the Tenant disputing the Notice. I have no evidence before me that the Tenant did dispute the Notice.

Given the Tenant did not pay the outstanding rent or dispute the Notice as required, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended September 20, 2019, the corrected effective date of the Notice. The Tenant was required under section 46(5)(b) of the *Act* to vacate the rental unit by September 20, 2019.

The Landlord is entitled to an Order of Possession and I issue the Landlord an Order of Possession effective two days after service on the Tenant pursuant to section 55(3) of the *Act*.

Conclusion

The Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 05, 2019

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Residential Tenancy Branch