



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPRM-DR, FFL

### Introduction

This participatory hearing was scheduled pursuant to a decision issued on October 11, 2019 in response to the landlord's application for an Order of Possession and Monetary Order for unpaid rent made under the Direct Request procedure.

At the hearing, only the landlord appeared. As provided in the Interim Decision issued on October 11, 2019, the landlord was required to serve the tenant with notification of this proceeding. Since the tenant did not appear, I explored service of hearing documents upon the tenant.

The landlord submitted that she sent the hearing documents to the tenant via registered mail on October 17, 2019. The landlord provided the registered mail receipt, including tracking number, and a search of the tracking number shows that the tenant has not picked up the registered mail. The landlord also testified that while awaiting for this hearing the tenant had notified her, via text message on October 25, 2019, that he would be vacating the rental unit on October 26, 2019. The landlord went to the unit on October 28, 2019 and found the unit abandoned with the key left inside. The landlord confirmed that she has since disposed of the tenant's abandoned property and regained possession of the rental unit.

I was satisfied the tenant was still residing at the rental unit when the registered mail was sent to him on October 17, 2019 and I found the tenant to be deemed served with the registered mail five days after mailing pursuant to section 90 of the Act.

Since the landlord has already regained possession of the rental unit, an Order of Possession is no longer required and I do not provide one with this decision. Accordingly, the only outstanding issue to determine is the landlord's monetary claim.

Included in the registered mail sent to the tenant on October 17, 2019 was an Amendment to an Application for Dispute Resolution whereby the landlord requested the monetary claim be amended to include loss of rent for October 2019, loss of rent for November 2019 and losses

incurred to board the incoming tenant's cat. I have amended the landlord's monetary claim accordingly.

#### Issue(s) to be Decided

Has the landlord established an entitlement to compensation from the tenant for unpaid for September 2019, loss of rent for the months of October 2019 and November 2019, and losses associated to boarding the incoming tenants' cat, as amended?

#### Background and Evidence

The landlord and the tenant entered into a tenancy agreement by way of emails and oral conversation in late July 2019. The rental unit had been occupied by the landlord's mother; however, the landlord's mother left the country and vacated the rental unit. The landlord and tenant agreed the tenancy would commence on August 1, 2019 for a monthly rent of \$2,100.00. The tenant paid a security deposit of \$1,050.00 and a pet damage deposit of \$750.00.

The tenant had signed a mutual agreement to end tenancy to be effective August 31, 2019; however, the tenant requested the date be extended to September 30, 2019. The landlord was agreeable to extending the date and sent the tenant another Mutual Agreement to End Tenancy but the tenant not sign it.

On September 1, 2019 the landlord did not receive any rent from the tenant and the tenant was still occupying the rental unit. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the door of the rental unit on September 2, 2019 indicating rent of \$2,100.00 was outstanding and a stated effective date of September 12, 2019. The tenant paid \$1,900.00 on September 7, 2019 by way of e-transfer but did not pay the balance of rent owing. Nor, did the tenant file an Application for Dispute Resolution to dispute the 10 Day notice.

The tenant then communicated to the landlord that he would not be vacating the rental unit before October 1, 2019 even though the landlord had new tenants lined up to move in. The tenant did not pay any rent for October 2019 and, as stated previously, remained in possession of the unit until at least October 26, 2019.

The landlord testified that she had incoming tenants set to move in for October 1, 2019 and because the tenant remained in possession of the rental unit she could not provide those tenants with possession of the rental unit, causing those tenants to find different accommodation. The landlord paid one-half of the bill to board the incoming tenants' cat. The landlord also submitted that the tenant's actions also caused the landlord to suffer a further loss of rent for the month of November 2019. I did not consider these claims further in the absence of the tenancy agreements for the incoming tenants and considering it is still early in the month of November 2019. I informed the landlord that in declining to hear these claims further I would dismiss them with leave to reapply.

The landlord did not request authorization to retain the tenants' deposits in filing the application or on the Amendment. The landlord confirmed that she will continue to hold the tenants' deposits in trust, to be administered in accordance with the Act.

The landlord provided copies of the emails exchanged between the parties, copies of the e-transfers the tenant sent to the landlord for rent and deposits, the 10 Day Notice to End tenancy or Unpaid Rent, among other documents.

### Analysis

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. The definition of tenancy agreement, as provided under section 1 of the Act, includes an agreement that is oral or in writing, and includes express or implied terms.

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.

I accept the unopposed evidence before me that the parties entered into a tenancy agreement requiring the tenant to pay rent of \$2,100.00 on the first day of the month. I accept the tenant failed to pay rent for September 2019 when due and the landlord posted a 10 Day Notice on the tenant's door. Since the tenant failed to pay the outstanding rent in full or file to dispute the 10 Day Notice within five days of receiving it, I find the tenancy came to an end pursuant to the 10 Day notice. Accordingly, the tenant was required to vacate the rental unit by the effective date of the 10 Day Notice and he failed to do so. I further accept that the tenant remained in possession of the rental unit until late October 2019.

Based on the above, I find the landlord entitled to recover the shortfall in rent for September 2019 in the amount of \$200.00 and loss of rent in the amount of \$2,100.00 for the month of October 2019. I further award the landlord recovery of the \$100.00 filing fee she paid for her Application for Dispute Resolution.

I dismiss the landlord's claims for loss of rent for November 2019 and other damages or loss with leave to reapply.

The tenant's security deposit and pet damage deposit remain held in trust by the landlord to be administered in accordance with the Act.

In keeping with all of the above, the landlord is provided a Monetary order for the sum of \$2,400.00 to serve and enforce upon the tenant [calculated as: \$200.00 + \$2,100.00 + \$100.00].

### Conclusion

The tenant has already vacated or abandoned the rental unit and an Order of Possession is no longer required or provided.

The landlord is provided a Monetary Order in the sum of \$2,400.00 to serve and enforce upon the tenant.

The security deposit and/or pet damage deposit remain in trust to be administered in accordance with the Act.

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 08, 2019

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Residential Tenancy Branch