



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPRM-DR, OPR-DR, FFL**

### **Introduction**

This participatory hearing was scheduled pursuant to an Interim Decision issued by an Adjudicator on February 11, 2021 in response to a landlord's application for an Order of Possession and Monetary Order for unpaid rent made under the Direct Request procedure.

At the participatory hearing, only the landlord's agent appeared. The landlord's agent was affirmed and confirmed he was not making an unofficial recording of the proceeding. The Residential Tenancy Branch had received a signed document indicating the landlord's agent had authority to act on the landlord's behalf for this dispute.

Since the tenant did not appear, I explored service of the Interim Decision of February 11, 2021 and the Notice of Dispute Resolution Proceeding upon the tenant. The landlord had submitted an image of the registered mail envelope that was returned to the landlord as being unclaimed. The envelope provides for a registered mail tracking number, date of mailing of February 12, 2021, and is addressed to the tenant at the rental unit address. The landlord's agent confirmed that the tenant continues to occupy the rental unit.

Section 90 of the Act deems a person to be in receipt of documents five days after mailing, even if the person refuses to accept or pick up their mail. In keeping with section 90 of the Act, I find the tenant is deemed to be in receipt of the hearing documents on February 17, 2021 and I continued to hear from the landlord without the tenant present.

The landlord's agent requested the application be amended to reflect the landlord as being the owner of the property, as identified on the tenancy agreement. The application was amended accordingly.

The landlord's agent also requested the monetary claim be amended to include loss of rent for the months of February 2021 through April 2021 since the tenant has continued to occupy the rental unit without paying any rent while awaiting this proceeding. Rule 4.6 of the Rules of Procedure provide:

**4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find the request to amend the monetary claim to include loss of rent for the months after the application was filed and to reflect the tenant's continued occupation of the rental unit while awaiting this proceeding, without paying rent, is reasonably foreseeable and I amend the monetary claim accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Has the landlord established an entitlement to a Monetary Order for the amounts claimed, as amended?
3. Award of the filing fee.

Background and Evidence

The tenancy started on August 1, 2020 on a month to month basis. The tenant paid a security deposit of \$425.00 and was required to pay rent of \$850.00 on the first day of every month. The tenant was also to put the hydro account in his name but he did not and the landlord has incurred hydro expenses.

The landlord's agent submitted that the tenant was deficient \$20.00 in making his December 2020 rent payment and he did not pay any rent for January 2021. On January 2, 2021 the landlord's agent prepared a 10 Day Notice to End Tenancy for

Unpaid Rent ("10 Day Notice") and posted it to the tenant's door the same date. The landlord's agent took a video of himself posting the 10 Day Notice to the door of the rental unit.

The 10 Day Notice indicates the tenant failed to pay rent of \$870.00 as of January 1, 2021 and has a stated effective date of January 15, 2021.

The landlord's agent testified that the tenant did not pay the outstanding rent after the 10 Day Notice was posted. Nor, did the tenant file an Application for Dispute Resolution to dispute the 10 Day Notice. Further, the tenant did not vacate the rental unit and has continued to occupy the rental unit without paying any monies for his continued use and occupancy of the unit.

The landlord seeks an Order of Possession effective as soon as possible. The landlord also seeks a Monetary Order for the unpaid rent for December 2020 and January 2021 (\$870.00) plus loss of rent for the months of February 2021 through April 2021 in the amount of \$850.00 per month.

In addition, the landlord had requested recovery of hydro costs of \$155.37 in filing the application. The landlord received a hydro bill for the period of November 4, 2020 through January 5, 2021 in the amount of \$155.37 and this bill was included in the original proceeding package sent to the tenant. The landlord's agent testified that the landlord has since received another hydro bill for the unit, in the amount of \$199.73 and payment was demanded in a letter dated April 6, 2021.

Evidence for this proceeding included a copy of: the tenancy agreement; the 10 Day Notice; a video of the 10 Day Notice being posted to the door; the hydro bill for the period up to January 5, 2021; and, registered mail receipts and envelope.

### 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.

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 tenant was required to pay rent of \$850.00 on the first day of every month and the tenant has failed to do so for the months of December 2020 and onwards. I was not provided any evidence to suggest the tenant had the legal right to withhold rent. I also accept the testimony of the landlord's agent and the video evidence that the 10 Day Notice was posted to the rental unit door on January 2, 2021. In keeping with section 90 of the Act, the tenant is deemed to have received the 10 Day Notice three days later on January 5, 2021. Accordingly, I find the tenant had until January 10, 2021 to either pay the outstanding rent or file to dispute the 10 Day Notice. Since the tenant did neither, I find the tenancy ended on January 15, 2021. Therefore, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, I find the landlord entitled to recover from the tenant the unpaid rent from December 2020 and January 2021 in the sum of \$870.00. I further find the landlord entitled to recover loss of rent incurred for the months of February 2021 through April 2021 since the tenant did not vacate the rental unit as required under the 10 Day Notice and his continued occupation of the rental unit has caused the landlord to incur loss of rent for these months.

As for the landlord's request for recovery of utilities, I find the tenant is liable to pay for his own hydro costs under his tenancy agreement. The landlord provided a hydro bill showing the landlord was billed for consumption in the rental unit for the period of November 4, 2020 through January 5, 2021. As such, I award the landlord recovery of the \$155.37 requested for hydro on the Application for Dispute Resolution. As for the landlord's request for the subsequent hydro bill, the landlord did not amend the claim for the subsequent hydro bill and I was not provided a copy of the subsequent hydro bill. Therefore, I do not consider the landlord's request for the subsequent hydro bill under this Application for Dispute Resolution and it is dismissed with leave to reapply.

I award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of all of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent for December 2020 and January 2021	\$ 870.00
Loss of rent for February through April 2021 (\$850 x 3)	2550.00
Hydro bill for November 4, 2020 – January 5, 2021	155.73
Filing fee	<u>100.00</u>
Monetary Order	\$3,675.73

### Conclusion

The landlord is provided an Order of Possession effective two (2) days after service.

The landlord is provided a Monetary Order in the amount of \$3675.73 to serve and enforce upon the tenant.

The landlord is at liberty to make another application for any other damages or loss not claimed or addressed by way of this decision, including utilities for the period after January 5, 2021.

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: April 30, 2021

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Residential Tenancy Branch