



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request (the Application) that was adjourned to a participatory hearing. The Landlord filed under the *Residential Tenancy Act* (the Act) on March 4, 2022, seeking:

- An Order of Possession as they issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice), and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 AM on July 18, 2022, and was attended by the Landlord, two agents for the Landlord (the Agent), as well as the Tenants, all of whom provided affirmed testimony. The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondents must be served with a copy of the Application and Notice of Hearing. As the Tenants acknowledged receipt on April 11, 2022, by registered mail, and raised no concerns with regards to service method or date, the hearing proceeded as scheduled.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. No documentary evidence was submitted for my consideration by the Tenants, but the Agents stated that the documentary evidence before me was served on the Tenants, who acknowledged receipt. Although I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

### Preliminary Matters

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 46 and 55 of the *Act*?

### Background and Evidence

The 10 Day Notice in the documentary evidence before me, signed and dated February 28, 2022, has an effective vacancy date of February 28, 2022, and indicates that as of January 26, 2022, the Tenants owed \$2,600.00 in unpaid rent. The parties agreed that the 10 Day Notice was personally served on and received by the Tenants on March 14, 2022.

The written tenancy agreement in the documentary evidence before me states that the periodic (month-to-month) tenancy commenced on December 25, 2021, and that rent in the amount of \$2,600.00 is due on the 25<sup>th</sup> day of each month. It also states that a \$1,250.00 security deposit was required. The parties agreed that the Tenant Q.Z. previously resided in the rental unit under a different one-year fixed-term tenancy agreement. A copy of that tenancy agreement was submitted for my consideration by the Landlord which states that the tenancy commenced on August 23, 2019, and that rent in the amount of \$2,500.00 was due on the 23<sup>rd</sup> day of each month. It also states that a \$1,250.00 security deposit was required.

Although the parties agreed that no rent is currently due, there was a dispute between them regarding whether any amounts were owed under the tenancy agreement at the time the 10 Day Notice was served, and if so, whether those amounts were paid within the permitted time period. The Tenants stated that \$4,000.00 in rent was paid in December of 2021 and \$1,000.00 in rent was paid in January of 2022. The Landlord provided the following rent payment scheduled:

- \$1,500.00 paid on December 2, 2021, and \$1,000.00 paid on December 9, 2022 – both payments for November 2020 rent;

- \$1,500.00 paid on December 29, 2021, and \$1,000.00 paid on January 31, 2022 – both payments for December 2021 rent;
- \$1,000.00 paid on February 25, 2022, \$600.00 paid on February 28, 2022, and \$1,000.00 paid on March 2, 2022 – all 3 payments for January 2022 rent.

### Analysis

Under the tenancy agreement currently in place between the two Tenants, I find that rent in the amount of \$2,600.00 is due on the 25<sup>th</sup> day of each month. Although a previous tenancy agreement existed between the Landlord and the Tenant Q.Z., I find that tenancy ended on or before December 25, 2021, when the current tenancy commenced. As a result, I do not find any claims by the Landlord regarding rent owed and paid for a period prior to December 25, 2021, relevant to the validity and enforceability of the 10 Day Notice.

As a result, I find that all rent paid to the Landlord by the Tenants on or after December 25, 2021, relates to the current tenancy. Section 46(1) of the *Act* states that 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. Section 46(4) of the *Act* states that if the overdue rent is paid within 5 days after receiving the 10 Day Notice, the notice has no effect. I find that section 46 of the *Act* therefore requires that rent be outstanding at the time the notice is issued in order to be valid. As the Landlord stated at the hearing that all rent was paid in full by March 2, 2022, which is 12 days prior to the date the parties agreed at the hearing that the 10 Day Notice was personally served (March 14, 2022), I am satisfied that no rent was owed at that time, regardless of whether rent was owed at the time it was signed and dated on February 28, 2022.

As a result, I therefore dismiss the Landlord's Application seeking enforcement of the 10 Day Notice without leave to reapply, I cancel the 10 Day Notice, and I order that the tenancy continue in full force and affect until it is ended by the parties under the *Act*. As the Landlord was unsuccessful in their Application, I decline to grant them recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed in its entirety without leave to reapply and I order that the 10 Day Notice is cancelled. I also order that the tenancy continue in full force and affect until it is ended by the parties under 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: July 26, 2022

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Residential Tenancy Branch