



# 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 by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An Order of Possession under a 10-Day Notice to End Tenancy for Unpaid Rent and Utilities (“10 Day Notice”) pursuant to sections 46 and 55;
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

### *Conclusion*

I grant the landlord an Order of Possession effective June 30, 2023.

I grant the landlord an award of \$100.00 for reimbursement of the filing fee which they may deduct from the security deposit on a one-time basis.

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### *1. Hearing*

This is a continuation of an adjourned hearing.

The matter initially proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the Act. The Adjudicator made an Interim Decision dated December 5, 2022, and ordered the proceeding be reconvened in accordance with section 74 of the Act as a participatory hearing was required to determine the details of the landlord's application.

### *2. Attendance*

The tenant attended. The landlord attended with counsel ("the landlord"). Each party had the opportunity to call witnesses and present affirmed testimony and written evidence.

The tenant acknowledged receipt of the landlord's application and evidence package. I find the landlord served the tenant with the documents in compliance with the Act.

Neither party made any adjournment or accommodation requests.

### *3. Settlement Discussions*

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained the hearing and settlement processes more than once, and the potential outcomes and consequences, to both parties. Both parties asked questions, which I answered.

I informed the parties that I make my Decision after the hearing and not during the hearing.

I assisted the parties in efforts to settle the matter.

Settlement discussions were unsuccessful, and the hearing continued to conclusion.

#### *4. Issue*

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to an award for reimbursement of the filing fee of \$100.00?

#### *5. Background and Evidence*

Considerable testimony was submitted during the contested hearing.

I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant, admissible and significant evidence in support of my conclusions and the facts as I find them.

The landlord issued a 10 Day Notice. As the tenant did not file a dispute and did not pay the outstanding rent within the time allowed, the landlord requested in Order of Possession.

The tenant claimed the landlord did not properly serve the 10 Day Notice. Also, the tenant testified he was experiencing personal difficulties leading to late

payment of rent. He has since paid all arrears and will not pay rent late again. He wants to remain in the unit.

### *Tenancy Background*

The landlord submitted a copy of the tenancy agreement. The parties agreed as follows:

INFORMATION	DETAILS
Type of Tenancy	Month-to-month
Beginning Date	February 1, 2016
Vacancy Date	Ongoing tenancy
Rent payable on first of month	\$1,530.00
Security deposit	\$750.00
Pet deposit	none
Arrears of Rent	none

### *10 Day Notice*

The landlord submitted a copy of the 10 Day Notice which is in the RTB form. The parties agreed as follows:

INFORMATION	DETAILS
Type of Notice	10 Day Notice
Date of Notice	September 13, 2022
Effective Date of Notice	September 23, 2022 (corrected to September 26, 2022)
Reasons for Issuance	Unpaid rent

Landlord applied for DR	September 23, 2022
Dispute filed by tenant	no
Amount owing in 10 Day Notice	\$4,590.00

The 10 Day Notice stated the tenant had 5 days to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution. If the tenant did not apply within the required time limit, the tenant was presumed to have accepted the tenancy is ending and must move out of the rent unit by the effective date of the Notice.

The landlord testified the 10 Day Notice was served by posting to the tenant's door on September 26, 2022. The person who posted the Notice to the door submitted a signed affidavit. A picture of the Notice posted to the door was submitted showing the Notice on the door's front, above the doorknob, and pushed into the side of the door frame.

The tenant acknowledged receipt of the 10 Day Notice on September 14, 2022. However, he stated the Notice was not properly served as it was placed under his door and not posted.

The landlord claimed the Notice had been properly served. The landlord suggested someone may have removed the Notice from the door and put it under the tenant's door, inserting it into the unit.

The tenant claimed the Notice was not properly served and the landlord's application for an Order of Possession should be dismissed.

### *Subsequent Payments*

The parties agreed as follows. The outstanding amount of \$4,590.00 stated in the 10 Day Notice was correct. The tenant made several partial payments since the Notice was issued. The tenant did not pay the balance owing within 5 days of service, by September 31, 2022. He has since paid the arrears and no rent is

outstanding. The tenant has paid on time for several months, since November 2022.

The tenant stated he experienced personal difficulties and was unable to meet his obligations to pay rent. He also did not understand the significance and consequences of not paying the outstanding rent within the time stated on the Notice. He intends to pay on time in the future.

The landlord testified that each payment on the outstanding amount was made by bank transfer. Following each partial payment, the landlord's counsel provided written notice to the tenant, copies of which were submitted as evidence, that the payments were accepted for use and occupancy only. The landlord informed the tenant they were continuing the application for an Order of Possession.

The tenant did not file a dispute to the 10 Day Notice.

## 6. Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

### *Ten-Day Notice*

I find the tenant was served the 10 Day Notice effective September 26, 2022, by posting to the tenant's door on September 13, 2022 in compliance with section 88 of the Act.

I find the form and content of the 10 Day Notice complies with section 52 of the Act.

I find the tenant, as acknowledged, owed \$4,590.00 in rent at the time the Notice was issued. Both parties agreed the tenant did not pay the rent nor did the tenant file an Application for Dispute Resolution within 5 days.

A tenant is required to pay rent when it is due. I find the tenant's explanation for why they did not pay rent is not justification under the *Act* for failure to pay.

Based upon the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant owed the rent claimed when the Notice was issued, and the tenant did not pay the outstanding amount nor file a dispute within 5 days.

Pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice requiring the tenant to vacate the rental unit.

The tenant remains in the unit.

Pursuant to section 55(1), as I have found the Notice complies with section 52 and the tenant has not applied to dispute the Notice, I must grant the landlord an Order of Possession.

The landlord requested an Order of Possession effective on the last day of the current month, April 30, 2022. The tenant testified it is impossible to find alternate accommodations in that time.

*Residential Tenancy Act Policy Guideline 54. Ending a tenancy: Orders of Possession* provides guidance on the effective date of the Order of Possession.

I have considered the length of the tenancy and the fact there are no arrears of rent.

I therefore grant an Order of Possession effective May 31, 2023.

Based on the uncontradicted testimony and documentary evidence of the landlord, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*, effective May 31, 2023, after service on the tenant.

This Order of Possession may be filed in the Supreme Court and enforced as an order of that Court.

As the landlord is successful in this application, the landlord is entitled to reimbursement of the filing fee under section 72 which they may deduct from the security deposit on a one-time basis only.

## 7. Conclusion

The landlord is granted an Order of Possession effective May 31, 2023. This Order of Possession may be filed in the Supreme Court and enforced 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 *Residential Tenancy Act*.

Dated: April 10, 2023

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Residential Tenancy Branch