



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant did not appear at the hearing; however, an advocate appeared on his behalf. The Advocate stated that he had not been provided any instructions by his client and his knowledge was limited to what the tenant had told him.

Other than a copy of the 10 Day Notice no other documentary evidence had been submitted by either party. The majority of evidence for this hearing was derived from verbal testimony of the landlord and the tenant's submissions made on his Application.

### Issue(s) to be Decided

1. Has the tenant established a basis to cancel the 10 Day Notice to End Tenancy for Unpaid Rent?
2. Is the landlord entitled to an Order of Possession?

### Background and Evidence

The tenancy commenced July 1, 2013 and the tenant is required to pay rent on the 1<sup>st</sup> day of every month. The monthly rent was originally \$775.00 and by way of Notices of Rent Increase, the rent was increased to \$792.00 as of July 1, 2014 and \$811.00 starting July 1, 2015.

The tenant failed to pay \$613.00 of the rent due for May 2015 and did not pay rent for June 2015 in the amount of \$792.00. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door on June 8, 2015 indicating

rent of \$1,405.00 was outstanding as of June 1, 2015. The Notice has a stated effective date of June 19, 2015.

The tenant filed to dispute the 10 Day Notice on June 12, 2015, indicating he received the 10 Day Notice on June 8, 2015 and that he is behind in rent due to loss of Employment Insurance benefits. The tenant's Advocate confirmed that he has been assisting the tenant in seeking Employment Insurance benefits.

The landlord testified that the tenant presented a cheque in the amount of \$385.00 on June 16, 2015. Then on August 4, 2015 the tenant presented the landlord with two more cheques in the amount of \$450.00 each and \$400.00 in cash. The landlord testified that a receipt was issued to the tenant indicating the landlord was accepting the monies "without prejudice" and that she informed the tenant that she would be attending the hearing set for today as the tenant was still in rental arrears.

The landlord testified that she is willing to permit the tenant occupancy of the rental unit until August 31, 2015 but that she seeks to regain possession of the rental unit on that date if the tenant does not satisfy the rental arrears of \$1,342.00 that are currently outstanding. The landlord stated that she is willing to reinstate the tenancy if the tenant pays the outstanding amount of \$1,342.00 by August 31, 2015 and pays rent on time in the future.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement and the Act unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances for when a tenant may withhold rent that is payable to the landlord. An inability to pay rent is not a legal basis for not paying 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 Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution.

In this case, the tenant submitted that he received the 10 Day Notice on June 8, 2015. The tenant did not pay the outstanding rent within five days of receiving the 10 Day Notice but he did file to dispute it within five days.

Where a tenant files to dispute a 10 Day Notice the tenant bears the burden to establish that the rent had been paid, that the rent is not owed, or a legal basis for not paying the rent. It was undisputed that the tenant owed the rent as indicated on the 10 Day Notice and I was not presented a legal basis for not paying rent.

Although I heard the tenant did present the landlord with enough money to satisfy the outstanding rent indicated on the 10 Day Notice on August 4, 2015, I am reasonably satisfied that the landlord sufficiently communicated to the tenant that the tenancy was not being reinstated by way of those payments.

In light of the above, I find the tenant did not present sufficient grounds for me to cancel the 10 Day Notice and I dismiss his Application.

Since the landlord orally requested that the tenant vacate the rental unit by August 31, 2015 during the hearing I have considered whether the landlord is entitled to an Order of Possession under section 55 of the Act.

Section 55(1) of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a Notice to End Tenancy and the tenant's application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

I am satisfied that the criteria of section 55(1) have been met and I provide the landlord with an Order of Possession effective August 31, 2015, the date requested by the landlord during the hearing.

For further clarity, the tenancy is over at this time; however, the landlord indicated a willingness to reinstate the tenancy upon satisfaction of certain terms and the parties are informed that they are at liberty to reinstate the tenancy by mutual agreement. If mutual agreement is reached, it is strongly recommended that the agreement be reflected in writing.

Conclusion

The tenant's Application to cancel a 10 Day Notice has been dismissed and the tenancy has ended for unpaid rent. The landlord has been provided an Order of Possession effective August 31, 2015 as requested by the landlord during the hearing.

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: August 12, 2015

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Residential Tenancy Branch

