



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LMLTD HOLDINGS CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was conducted via teleconference call to deal with the 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 had provided a copy of the 10 Day Notice that was the subject of this dispute. The tenant had referred to a previous dispute resolution decision in the detail of dispute but had not provided a copy of the relevant decision. However, I was able to retrieve a copy of the previous dispute resolution decision from the Branch records and I read from relevant sections during the hearing and referenced that decision in making this decision (the file number for that previous hearing has been referenced on the cover page of this decision).

It should be noted that after hearing from both parties, I began to give my findings to the parties orally, the tenant became very upset and made a number of statements concerning the status of the repairs at the property, indicated that he would be appealing this decision, and alleged that he had been discriminated against before he abruptly hung up his end of the telephone. As the hearing had not yet concluded I remained on the teleconference call with the landlord and discussed the effective date of the Order of Possession. During that time the teleconference remained open so as to permit the tenant to reconnect to the hearing if he so wished. The tenant did not reconnect during the remainder of the hearing.

### Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?

### Background and Evidence

The parties were in agreement that the tenancy agreement started October 2014 and requires the tenant to pay rent of \$950.00 on the first day of every month. The parties participated in a number of previous dispute resolution proceedings, including one on November 5, 2015 (the file number is referenced on the cover page of this decision). In the Arbitrator's decision of November 5, 2015 a settlement agreement with six terms was recorded. Two of the terms were particularly relevant to this proceeding and I have reproduced the relevant terms below:

"4. So long as the tenant cooperates fully, the landlord agreed to address the list of thirteen deficiencies raised in the prior dispute resolution hearing on or before 15 December 2015."

And,

"6. The landlord agreed to provide \$475.00 to the tenant as compensation. The tenant will deduct this amount from December 2015's rent. Payment of the net amount will satisfy the tenant's obligation pursuant to section 26 of the Act."

Below, the six terms the Arbitrator also recorded the following:

"Each party stated that he understood the terms of the agreement. The agent confirmed that he had authority to bind the landlord to this agreement. The parties agreed that these particulars comprise the full and final settlement of all aspects of their disputes for both parties."

I confirmed with the parties that the tenant did withhold \$475.00 from rent payable for December 2015 rent and paid the net amount of \$475.00 as agreed upon during the previous hearing. However, the tenant also withheld \$475.00 from rent payable for January 2016 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on January 2, 2016 (the Notice). The Notice indicates \$475.00 was outstanding as of January 1, 2016 and has a stated effective date of January 15, 2016. The tenant did not pay the outstanding rent for January 2016 but failed to dispute the Notice within the time limit for doing so. I also heard undisputed

testimony that the tenant has not paid any rent for February 2016 and he continues to occupy the rental unit along with other occupants.

The tenant submitted that he withheld one-half of the rent payable for January 2016 and did not pay any rent for February 2016 because the landlord failed to make or complete repairs as agreed upon during the November 5, 2015 hearing.

I noted that the agreement recorded on November 5, 2015 did not indicate that the tenant was permitted to withhold rent except for the one-time deduction from December 2015 rent. I informed the tenant that the Act only permits a tenant to withhold rent for repairs if “emergency repairs” were made by the tenant for which the tenant incurred an expense or where the landlord or an Arbitrator gives the tenant authorization to make deductions for repairs. In response, the tenant did not indicate he made any emergency repairs or that he had gained the landlord’s agreement to make a deduction and referred back to what transpired during the previous dispute resolution hearing and asserted that he had settled for less than he had originally claimed because the landlord agreed to make repairs by a certain date.

Initially, the landlord requested an Order of Possession effective February 29, 2016; however, after the tenant became very upset and made the statements described previously in this decision the landlord expressed concerns the tenant will comply with the Order of Possession and the landlord requested that he be Order of Possession with an earlier effective date.

### 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 under the Act to withhold all or part of rent payable.

Where a tenant does not pay all of the rent that is due 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 did not pay the outstanding rent but filed to dispute the Notice. Since it was undeniable that the tenant withheld \$475.00 from rent otherwise payable for the month of January 2016, which is the amount appearing on the 10 Day Notice, the tenant bears the burden to demonstrate that he had a legal right under the Act to withhold that amount from rent.

The Act provides very limited and specific circumstances when a tenant may withhold all or a part of the rent payable to the landlord. Those circumstances are where: the tenant had overpaid rent due to an illegal rent increase; the tenant had overpaid the security deposit or pet damage deposit; the tenant had incurred costs to make emergency repairs for which the tenant has receipts and as provided under section 33 of the Act; or the tenant had obtained authorization from the landlord or an Arbitrator.

In this case, the tenant was given pre-authorization to deduct \$475.00 from December 2015 rent by the landlord and an Arbitrator and the tenant made that deduction. The agreement reached between the parties on November 5, 2015 did not indicate the tenant would be authorized to make any other deductions from rent. Nor, did the Arbitrator give the tenant authorization to make any other deductions from rent. Accordingly, I find the tenant did not have authorization from the landlord or an Arbitrator to make a deduction from rent due for the month of January 2016. Nor did the tenant present any other basis under the Act that would give him the legal right to withhold rent due for January 2016.

While the tenant was of the position the landlord did not make repairs that were agreed upon during a previous hearing, the tenant's remedy would have been to file another Application to seek repair orders and/or an Arbitrator's authorization for compensation. The tenant did not have the right to withhold rent due for January 2016 and then expect retroactive authorization to do so during this hearing.

In light of the above, I find the tenant did not have the legal right to withhold rent from the landlord for January 2016 and there is no basis under the Act for me to cancel the Notice to End Tenancy. Therefore, I find this tenancy at an end due to unpaid rent and I dismiss the tenant's application.

Section 55(1) of the Act provides that where a tenant's application to cancel a Notice to End Tenancy is dismissed and the Notice to End Tenancy meets the form and content requirements as provided under section 52, the landlord must be provided an Order of Possession. Upon review of the Notice I am satisfied that it meets the form and content requirements of section 52 and since I have dismissed the tenant's application to cancel the Notice I must provide the landlord with an Order of Possession. The landlord is provided an Order of Possession that is effective two (2) days after service upon the tenant.

### Conclusion

The tenant's application has been dismissed. The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

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: February 18, 2016

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Residential Tenancy Branch

