



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on July 1, 2016.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The parties agreed that the tenancy commenced on or about November 1, 2015. Rent in the amount of \$700.00 was payable. A security deposit was not paid.

The parties agreed that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, with an effective date of July 12, 2016.

The landlord testified when the tenant first moved into the rental unit it was to be as a roommate and the rent that was due would be exchanged for work to be done. The landlord stated that in January 2016, that agreement changed as the tenant wanted to have exclusive rights as a tenant. The landlord stated that the tenant has only paid rent twice since January 2016, and no rent for August 2016 was paid.

The tenant agreed that have not paid any rent for August 2016. The tenant stated rent from January 2016 to May 2016, has been paid as they were doing renovations to the property.

## Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

### **Rules about payment and non-payment of rent**

**26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

**How to end a tenancy is defined in Part 4 of the Act.**

### **Landlord's notice: non-payment of rent**

**46** (1) *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.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

...

(4) *Within 5 days after receiving a notice under this section, the tenant may*

*(a) pay the overdue rent, in which case the notice has no effect,  
or*

*(b) dispute the notice by making an application for dispute  
resolution.*

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant has failed to prove that the landlord waived the rent for January 2016, February 2016, March 2016, April 2016, and May 2016.

While I accept there may have been a work agreement at the start of the relationship, and the work was exchanged for the rent owed, I find the landlord had the right to revoke any agreement for work and enforce the tenancy agreement at any time during the tenancy. The evidence of the landlord was that work agreement was cancelled in January 2016.

No rent was paid for January 2016, February 2016, March 2016, April 2016, May 2016 and August 2016. I find the Notice issued on July 1, 2016, is a valid notice under the Act. Therefore, I dismiss the tenant's application to cancel the Notice.

As the tenant's application is dismissed, I must grant the landlord an order of possession.

#### **Order of possession for the landlord**

*55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession,*  
*and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

#### **Conclusion**

The tenant failed to pay rent. The tenant's application is dismissed. The landlord is granted an order of possession.

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 22, 2016

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Residential Tenancy Branch