



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNR

### Introduction

This hearing was held in response to the tenant's application for dispute resolution in which the tenant has applied to cancel a 10 day Notice to end tenancy for unpaid rent and utilities issued on December 2, 2016.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

### Preliminary Matters

The tenant said that on the day prior to the hearing he received evidence from the landlord. The tenant had that evidence before him.

The landlord said that the evidence was placed on the tenants' door during the last week of December 2016.

As the tenant submits he received the evidence only the day before the hearing the landlord was asked to make oral submissions in relation to that evidence.

The tenant submitted a copy of the 10 day Notice to end tenancy for unpaid rent issue don December 2, 2016.

### Issue(s) to be Decided

Should the 10 Day Notice to end tenancy for unpaid rent and utilities (the Notice") issued on December 2, 2016 be cancelled?

### Background and Evidence

The parties confirmed that the tenancy commenced with a different tenant and that the applicant for this hearing was the previous tenants' roommate. The previous tenant passed away on May 10, 2016. The landlord and the roommate (the applicant) then entered into a verbal tenancy agreement. A tenancy agreement was not signed.

The tenant confirmed that the rent was \$919.00 per month, due on the first day of the month. The landlord and tenant agreed that up until October 2016 the tenant completed work for the landlord and received a rent reduction. That work ceased in October 2016.

The tenant confirmed that effective November 10, 2016 he owed \$643.00 rent. The landlord had assisted the tenant in obtaining support from a non-profit agency that provided \$500.00 toward rent owed; paid on November 10, 2016. The landlord then received an income assistance cheque in the sum of \$459.50, which was applied to the outstanding balance of rent owed. On November 30, 2016 the tenant paid \$200.00 cash, resulting in a credit of \$16.50 toward December 2016 rent owed.

The landlord stated that on December 2, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of December 13, 2016, was served by posting to the tenants' door. The tenant confirmed receipt of the Notice on December 2, 2016. Within five days of December 2, 2016 the tenant applied to dispute the Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$902.50 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant said that he has been thwarted in his ability to pay the rent as the landlord has rejected attempts by the tenant to obtain a roommate. The tenant is unable to pay the rent without the assistance of a roommate. He had been promised another, smaller unit in the building but one has not become available.

The tenant said he did locate someone who was willing to move in and share the rent. The landlord had encountered this person in the lobby and had become upset as that person was allegedly smoking marijuana or at least appeared as if he had been. The tenant said that the reaction of the landlord to his potential roommate essentially scared that person off. As a result the landlord caused the tenant to lose the income he required in order to pay the rent.

The landlord said that he has been friends with the tenant and that the tenant has known what their policy is regarding roommates. The tenant must complete an application as the landlord needs to ensure the safety of all occupants of the building.

The tenant wished to go into detail regarding past issues in securing a roommate; based on an alleged lack of cooperation by the landlord.

It was explained that the issue before me was the payment of December 2016 rent. The tenant confirmed that he did not attempt to pay \$902.50 to the landlord within five days of December 2, 2016. The tenant did continue to blame the landlord for his inability to pay, due to the landlords' rejection of the roommate.

The landlord said that January 2017 rent has not been paid. The tenant said that the \$459.50 income assistance cheque would have been received by the landlord.

### Analysis

I find that the tenant received the Notice to end tenancy on December 2, 2016; the date confirmed by the tenant.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant confirmed receipt of this Notice on December 2, 2016, I find that the earliest effective date of the Notice is December 12, 2016.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on December 13, 2016; pursuant to section 88 of the Act.

Section 46(4) of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an application for dispute resolution to dispute the Notice. The tenant filed an application to dispute the Notice but has confirmed that he did not approach the landlord with any attempt to pay the rent that is owed for December, 2016.

In relation to the tenants' defense; that the refusal of the landlord to accept a roommate resulted in the tenants' inability to pay the rent, I have considered section 26(1) of the Act, which provides:

**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.*

The tenant has alleged that the landlord has essentially denied the tenant the right to have an occupant in the rental unit. I have made no finding in relation to that allegation. However, the tenant may not use this reasoning in relation to rent that is due. If the tenant believes the landlord is breaching the Act the tenant may take steps to bring that matter before an arbitrator, through an application for dispute resolution. The tenant is not entitled to withhold rent when a dispute exists. There was no evidence before me that the tenant had an order allowing him to reduce rent owed or that any emergency repair had been completed by the tenant, in accordance with section 33 of the Act.

Therefore, as the tenant has confirmed that December rent in the sum of \$902.50 was not paid within five days of December 2, 2016 I find that the tenants' application disputing the 10 day Notice to end tenancy for unpaid rent is dismissed.

Section 46(5) of the Act provides:

*(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit to which the notice relates by that date.*

Therefore, as the tenant's application is dismissed, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; December 13, 2016.

Section 55(1) of the Act provides:

**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 to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

A copy of the 10 day Notice to end tenancy for unpaid rent, in the approved form and with the required content was supplied as evidence.

Therefore, as the tenants' application is dismissed I find pursuant to section 55(1) of the Act that the landlord must be issued an order of possession.

#### Conclusion

The application is dismissed.

The landlord is entitled to an order of possession.

This decision is final and binding and 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: January 12, 2017

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Residential Tenancy Branch