



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, ERP, OPR, MNR, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting an order of possession due to non-payment of rent and a monetary order to recover unpaid rent.

The Tenant filed an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, and for an order for the Landlord to make emergency repairs.

The Landlord appeared at the hearing; however, the Tenant did not. The Landlord testified that the Tenant served him with the notice of hearing documents in person on January 22, 2018.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant applied for dispute resolution but failed to attend the hearing. The phone line remained open while the phone system was monitored for fifteen minutes and the Tenant did not call into the hearing during this time. The phone system appeared to be working as the Landlord and his agent separately called into the hearing with no difficulty. Therefore, as the Tenant did not attend the hearing by 9:15 am, I dismiss the Tenant's claims without leave to reapply.

### Issue to be Decided

- Is the Landlord entitled to an order of possession due to non-payment of rent?

### Background and Evidence

The Landlord testified that the tenancy began on May 1, 2017, as a six month fixed term tenancy that continued thereafter as a month to month tenancy. Rent in the amount of \$1,000.00 was due on the first day of the month. The Tenant paid the Landlord a security deposit of \$500.00. The Landlord testified that the Tenant was having difficulty paying the rent so they agreed in December 2017, that the Tenant could pay the rent on the 15<sup>th</sup> day of each month. The Landlord provided a copy of the original tenancy agreement.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the month of January 2018.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 21, 2018, ("the 10 Day Notice").

The Landlord testified that the Tenant was served with the Notice in person on January 21, 2018.

The Notice states that the Tenant has failed to pay rent in the amount of \$1,000.00 which was due on January 15, 2018. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant made an application to dispute the Notice on January 22, 2018, but failed to attend the hearing.

The Landlord testified that the Tenant did not pay the rent owing for January 2018, within five days of receiving the 10 Day Notice. The Landlord testified that the Tenant has not paid any rent since the 10 Day Notice was issued.

The Landlord seeks an order of possession for the rental unit.

### Analysis

Section 26 of the Act provides that a Tenant must pay rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Residential Tenancy Branch Policy Guideline # 3 Claims for Rent provides as a general rule, non-payment of rent is considered to be a fundamental breach of the Act or tenancy agreement.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant disputed the 10 Day Notice but failed to attend the hearing. I find that the Tenant did not pay all the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice. I find that the Tenant did not have a legal right under the Act to withhold payment of the rent and therefore the Tenant fundamentally breached the tenancy agreement.

Under section 55 of the Act, when a Tenants application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

The Landlord's request for a monetary order for unpaid rent is dismissed with leave to reapply. The Landlord's testimony of when he served his Application to the Tenant was on a date prior to the date he made his application.

### Conclusion

The Tenant disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities but failed to attend the hearing. The Tenant failed to pay the rent when it was due under the tenancy agreement.

The Landlord is granted an order of possession effective 2 days after service on 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: March 20, 2018

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Residential Tenancy Branch