



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDCT, OLC, PSF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62; and
- an order to the landlord to provide services or facilities required by law pursuant to section 62.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue –Tenant Request for Adjournment

The tenant requested an adjournment to allow him the opportunity to submit further evidence. The landlord was not agreeable to the tenant's adjournment request.

Residential Tenancy Branch, *Rules of Procedure*, rule 7.9 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- (a) the oral or written submissions of the parties;
- (b) the likelihood of the adjournment resulting in a resolution;
- (c) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment;
- (d) whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- (e) the possible prejudice to each party

I informed the tenant at the hearing that I would not adjourn the hearing. Although I considered all the criteria in 7.9, I declined to adjourn the hearing as the tenant had ample opportunity to file his evidence, and it would unfairly prejudice the landlord to reschedule the hearing.

#### Preliminary Issue – Sever

Rule 2.3 of the Residential Tenancy Branch *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 10 Day Notice. Accordingly I find the remaining portion of the tenant's application must be severed and must be dealt with separately through an application. Therefore the remainder of the tenant's application is dismissed with leave to reapply.

#### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

#### Background and Evidence

As per the testimony of the parties, the tenancy began on June 30, 2011 on a month-to-month basis. Rent in the amount of \$435.00 is payable on the first of each month. The tenant remitted a security and pet deposit in the amount of \$327.50 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the unit.

The tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") dated October 22, 2018 with an effective date of November 5, 2018.

The landlord testified that the tenant has not paid any rent since July 5, 2018. During the hearing, the tenant confirmed rent had not been paid since July 5, 2018. The tenant testified that rent is withheld because the living conditions are unsafe, dangerous and unhealthy.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed the application within five days but at no time argued that rent had been paid in full; instead he testified that he withheld rent on the basis that the living conditions are unsafe, dangerous and unhealthy.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, whether or not the landlord complies with the *Act*, *Regulations* or tenancy agreement. Under the *Act*, the tenant was obligated to pay rent and failed to do so.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the testimony and the notice before me, I find that the tenant was served with an effective notice. Accordingly I dismiss the tenant's application to cancel the 10 Day Notice and find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

The remainder of the tenant's application is dismissed with leave to reapply.

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: November 22, 2018

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Residential Tenancy Branch