



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FFT, LAT, LRE, MT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 24, 2019 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 24, 2019 (the “Notice”);
- For more time to file the dispute;
- For authorization to change the locks to the rental unit;
- To suspend or set conditions on the Landlord's right to enter the rental unit; and
- For reimbursement for the filing fee.

The Tenant did not appear at the hearing which lasted 29 minutes. The Landlord did appear. The Landlord confirmed the Tenant is still living at the rental unit. The Landlord sought an Order of Possession for the rental unit.

I waited 10 minutes, until 9:40 a.m., to allow the Tenant to participate in this hearing scheduled for 9:30 a.m. The Tenant did not call into the hearing. I proceeded with the hearing in the absence of the Tenant.

Both parties had submitted evidence prior to the hearing. The Landlord advised that he did not receive a copy of the hearing package or Tenant's evidence. He testified that he received something via text message from the Tenant and called the RTB on March 8<sup>th</sup> about the hearing. The Landlord had not served a copy of his evidence on the Tenant.

The Rules of Procedure (the “Rules”) require parties to serve their evidence on the other party prior to the hearing. I am not satisfied that the Tenant did so. The Landlord

acknowledged that he did not do so. In the circumstances, I have not considered the evidence submitted other than the Notice given the nature of this document.

I note that I would not have considered the Tenant's evidence in any event as he failed to appear and present his evidence as required by rule 7.4 of the Rules.

I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

### Issue to be Decided

1. Should the Landlord be issued an Order of Possession based on the Notice pursuant to section 55 of the *Act*?

### Background and Evidence

The Landlord testified as follows in relation to a tenancy agreement. There is a written agreement between the Landlord and Tenant in relation to the rental unit. The tenancy started November 05, 2018 and is for a fixed term of one year. Rent is \$1,800.00 per month due on the first of each month. The agreement is signed by the Landlord and Tenant.

The Notice states the Tenant failed to pay \$2,300.00 in rent that was due January 01, 2019. It is addressed to the Tenant and relates to the rental unit. It is signed and dated by the Landlord. It has an effective date of February 02, 2019.

The Landlord testified that he posted both pages of the Notice on the door of the rental unit on January 24, 2019.

The Landlord testified that the Tenant failed to pay \$500.00 of the rent for December and did not pay rent for January and this is what is reflected on the Notice. The Landlord testified that the Tenant has not paid any rent since the Notice was issued. The Landlord testified that the Tenant had no authority under the *Residential Tenancy Act* (the "*Act*") to withhold rent.

### Analysis

Rule 7.3 of the Rules states that an arbitrator can dismiss an application for dispute resolution without leave to re-apply if a party fails to attend the hearing.

Here, the Tenant failed to attend the hearing and provide evidence regarding the Application and his dispute of the Notice. In the absence of evidence from the Tenant regarding the basis for the Application and his dispute of the Notice, the Application is dismissed without leave to re-apply.

Section 55 of the *Act* requires an arbitrator to issue an Order of Possession if a tenant applies to dispute a notice to end tenancy, the application is dismissed and the notice complies with section 52 of the *Act*.

Section 52 of the *Act* outlines the form and content required for a notice to end tenancy issued under the *Act*.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content.

I have dismissed the Application and found the Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55 of the *Act*, I issue the Landlord an Order of Possession for the rental unit.

I also note that I accept the undisputed testimony of the Landlord that the Tenant had no authority to withhold rent and never paid the outstanding rent. Therefore, sections 46(3) and 46(4)(a) of the *Act* do not apply.

I grant the Landlord an Order of Possession effective two days after service on the Tenant as the effective date of the Notice has passed and, according to the undisputed testimony of the Landlord, the Tenant has not paid rent for March.

### Conclusion

The Application is dismissed without leave to re-apply.

The Landlord is granted an Order of Possession pursuant to section 55 of the *Act*. The Order is effective two days after service on the Tenant. The Order must be served on

the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 11, 2019

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Residential Tenancy Branch