



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, CNL, FF

### 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 February 6, 2019, to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property, to have the landlord make emergency repairs, for a monetary order and to recover the filing fee.

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.

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.

### Preliminary and procedural matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy.

I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notices to End Tenancy and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to reapply.

Counsel for the landlord indicated that they the tenant is not using the property for residential purposes as they believe the tenant is not residing on the property and using the space solely as a storage area.

The tenant stated that they live in the property and they have no other living premises.

In this case, I am accepting jurisdiction over this matter. The tenant rented this space as a rental unit under the Act. If the rental unit was not used in accordance with the Act, the landlord was able to issue a notice to end tenancy for cause.

### Issue to be decided

Should the Notice be cancelled?

Should the Two Month Notice to End Tenancy for Landlord's Use of Property be cancelled?

Is the tenant entitled to recover the filing fee from the landlord?

### Background and Evidence

The tenant testified that they received the Notice. The tenant stated that they had paid the male landlord three months of rent in advance in cash. The tenant stated that the landlord is deceased so it too hard to prove otherwise.

Counsel for the landlord stated rent was not paid as claimed.

### Analysis

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

### **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.

In this case, I do not accept the tenant's evidence that they paid the landlord three months of rent in advance. The tenant provided no documentary evidence, such as banks statements to prove their version.

While the male landlord is deceased, I find it more likely than not that the tenant is taking advantage of the female landlord and the situation. I find the tenant has not met the burden of proof to prove rent was paid. Therefore, I dismiss the tenant's application.

I find the tenancy has legally ended in accordance with the Act and the tenant is now overholding the premises as an occupant.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

### **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 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.

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. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Further, as the tenancy has legally ending for failure to pay rent. I find it is not necessary to consider the merits of the Two Month Notice to End Tenancy for Landlord's Use of Property. I therefore cancel the Two Month Notice to End Tenancy for Landlord's Use of Property and the notice has no force or effect.

As the tenant was not successful with their application the tenant is not entitled to recover the filing fee from the landlord.

### Conclusion

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: March 15, 2019

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Residential Tenancy Branch