



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 25 SULLIVIAN DEVELOPMENT  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Tenant: CNR

Landlord: OPR OPL-4M MNDCL-S MNRL-S FFL

### **Introduction**

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*).

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) pursuant to section 46 of the *Act*.

The landlord applied for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- an Order of Possession for Landlord's Use pursuant to section 49 of the *Act*;
- a Monetary Order for compensation for damage or loss pursuant to section 67 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord's agents S.G. and S.A. (herein referred to as "the landlord") attended on behalf of the corporate landlord.

As both parties were present, service of documents was confirmed. The parties testified that they were in receipt of each other's applications and evidentiary materials.

Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*.

#### Preliminary Issue – Amendment to Landlord's Application

The landlord's Application dated March 7, 2019 included a request for an Order of Possession based on a notice to end tenancy for landlord's use issued to the tenant on February 13, 2019. The landlord applied for this Order prematurely, prior to the expiry of the time limit for the tenant to dispute the notice, therefore, I dismiss this part of the landlord's claim with leave to reapply.

#### Preliminary Issue – Procedural Matters

As a procedural matter, I explained that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, I explained that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

#### Issue(s) to be Decided

Should the landlord be granted an Order of Possession on the basis of the 10 Day Notice to End Tenancy for Unpaid Rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to monetary compensation for damages or loss?

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

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

No written tenancy agreement was submitted into documentary evidence. The tenant testified that the tenancy began June 2016. A prior arbitration decision dated May 11, 2018 (file number noted on the cover sheet of this Decision) established monthly rent of \$500.00 for this tenancy. I note that the tenant submitted cancelled rent cheques into evidence, which indicate payment dated for the first of the month. Therefore, I find that payment of rent is due on the first of the month for this tenancy.

Both parties submitted a copy of the 10 Day Notice into evidence. The notice is dated February 13, 2019 and claims that \$2,500.00 in rent was owed as of the date of the notice.

The landlord's agent testified that the tenant was issued the 10 Day Notice for failing to pay rent for five months, from October 2018 to February 2019.

The tenant confirmed receipt of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (herein referred to as the "10 Day Notice") on February 19, 2019, sent to the tenant by Canada Post registered mail. The tenant applied to dispute the notice on February 23, 2019, within five days of the deemed receipt date of the notice.

The tenant testified that the landlord sent him a letter dated May 31, 2018, providing directions to the tenant to send his monthly rent payment of \$500.00 to an address specified by the landlord in the letter. The tenant submitted a copy of the letter into evidence into support of his testimony. The tenant testified that he sent post-dated rent cheques for June, July and August 2018 by Canada Post registered mail to the landlord's address provided in the letter. The tenant testified that his cheques were returned as "unclaimed". The tenant submitted into evidence a copy of the front of the returned envelope containing the cheques, which is clearly marked "Return to Sender" with the reason checked as "Unclaimed".

The landlord confirmed that he was away on holiday for a period of time and did not collect mail during that time.

### Analysis

A tenant who receives a 10 Day Notice to End Tenancy under section 46 has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In this case, I find that the tenant was deemed in receipt of the 10 Day Notice on February 18, 2019 as it was sent to the tenant by Canada Post registered mail on February 13, 2019. The tenant filed his application to dispute the notice on February 23, 2019. Accordingly, the tenant complied with the five-day time limit provided by section 46 of the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

In this case, I find that the tenant sent his rent cheques for June to August 2018 to the address provided by the landlord in the landlord's letter dated May 31, 2018 by Canada Post registered mail. The tenant's rent cheques were returned unclaimed.

As such, I find it reasonable that the tenant withheld sending further rent cheques until the landlord provided the tenant with an address where the rent cheques would be received. In following the landlord's directions, the tenant incurred costs to send the cheques by registered mail and therefore, I find there is no expectation for the tenant to continue to send cheques and incur costs with no guarantee that the landlord would claim and accept those cheques.

I find that the landlord has a duty to conduct his business as a landlord with due diligence, which includes providing a means for the tenant to make his rent payments which will be assured of receipt by the landlord.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord failed to exercise reasonable diligence in providing a valid means by which the tenant could make rent payments. As such, I do not find that the tenant was required to make further attempts to send rent payments to the landlord after his rent cheques for June, July and August 2018 were returned unclaimed. Therefore, I do not find that the tenant owed rent for the months from October 2018 to February 2019.

As such, I find that the tenant was successful in disputing the landlord's 10 Day Notice dated February 13, 2019. The 10 Day Notice is cancelled and of no force and effect. The tenancy continues until ended in accordance with the Act.

Further, I find that the landlord has failed to meet the standard of proof in his claim for rental arrears owed from October 2018 to April 2019 as the landlord has failed to provide reliable means for the tenant to be able to make payment of rent. Therefore, the landlord's monetary claim for \$3,500.00 is dismissed without leave to reapply.

I order that the tenant is not required to make rent payments until the landlord provides the tenant with a reliable address to where the tenant may send his rent payments with assurance that those payments will be collected and accepted. The landlord must send these instructions to the tenant in writing by Canada Post registered mail to ensure the tenant receives these instructions. The landlord is directed to use the tenant's address for service as provided on the tenant's Application for Dispute Resolution for this matter.

### Conclusion

The tenant was successful in cancelling the landlord's 10 Day Notice dated February 13, 2019. The 10 Day Notice is cancelled and of no force and effect. The tenancy will continue until ended in accordance with the Act.

Other than the landlord's application for an Order of Possession based on a Notice to End Tenancy for Landlord's Use, which is dismissed with leave to reapply, the remainder of the landlord's application dated March 7, 2019 is dismissed in its entirety without 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: April 15, 2019

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Residential Tenancy Branch