



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: CNR CNC  
Landlord: OPR OPC MNR FF

### **Introduction**

This hearing was convened in response to cross Applications for Dispute Resolution filed by the parties pursuant to the *Residential Tenancy Act* (the “Act”). The tenant filed to dispute the landlord’s two Notices to End for Unpaid Rent, and for Cause. The landlord sought Orders of Possession for the 2 Notices to End and a monetary Order for unpaid rent as well as the filing fee.

Both parties attended the hearing and provided testimony. The tenant was represented by their advocate, and the landlord was represented by their agent. Both parties acknowledged exchange of evidence as was provided to this proceeding. The tenant provided proof of mail registration service for all evidence provided. The landlord acknowledged they failed to collect the last evidence submission sent them in early March 2019. As the evidence was sent in accordance with the Act and Rules of Procedures I accept it deemed received by the landlord 14 days before the hearing.

The parties were provided opportunity to mutually resolve their dispute to no avail.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that was relevant and met the requirements of the Rules of Procedure. Only the evidence relevant to the issues and findings in this matter are described in this Decision.

### **Issues to be Decided**

- Should the 10 Day Notice to End Tenancy be cancelled?

- Is the landlord entitled to a monetary order for unpaid rent?
- Is there sufficient Cause to end the tenancy?
- Is the landlord entitled to an Order of Possession?

### **Background and Evidence**

It must be noted that this tenancy has endured multiple dispute resolution hearings in the past year as a resource to resolving a myriad of disputes, with apparently limited success in resolving the disputatious tenancy relationship to date.

The relevant evidence in this matter is as follows. Both parties agreed in the hearing that at the outset of the tenancy the verbal tenancy agreement was that the monthly payable rent is \$550.00 and that it would be paid in cash. The parties disagreed as to when the rent was due in the periodic tenancy. They also disagreed that the rent was reduced, by mutual agreement, during the tenancy.

The landlord served the tenant a 10 Day Notice to End for Unpaid Rent on February 15, 2019 stating the tenant had failed to pay \$1650.00 comprised of unpaid rent for December 2018, as well as January and February 2019 rent. The landlord replicated this claim in a 1 Month Notice to End for Cause served the tenant February 20, 2019 stating the tenant had been repeatedly late paying rent for the same 3 months.

In addition, the landlord claims in their 1 Month Notice to End *that the tenant has placed the landlord's property at significant risk; and, that the tenant has engaged in illegal activity which has or is likely to damage the landlord's property, or, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.*

The tenant testified that they have routinely paid all rent owed a week before the end of a month. They testified that they pay/have paid it in cash by leaving the rent on a counter of the laundry room accessible to the landlord. The tenant testified the landlord has given notes to the tenant which referenced the rent for the 3 months in question as having been received. The tenant provided the notes into evidence claiming they represent receipts for December 2018 and January 2019 rent which the landlord's agent confirmed were authored and signed by the landlord. The tenant claims the landlord did not provide a note or receipt respecting February 2019 rent. The parties agreed they were in dispute before the Branch in The parties agreed the rent for March 2019 was paid by bank draft.

In respect to the 1 Month Notice the landlord testified to conduct of the tenant which they described as “bad behaviour”. The landlord described that in an episode of angry behaviour the tenant threw recycling contents onto the property, was screaming outside the unit disturbing the neighbour, and additionally damaged a door in the process. The tenant testified they had just come home to a cold rental unit after continued disputatious exchanges with the landlord over heat.

### **Analysis**

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. In this matter I find the 10 Day Notice received by the tenant states the tenant had not paid the rent for December 2018 and for the first 2 months of 2019. I find the landlord acknowledged the landlord’s notes to the tenant effectively stated that the rent for December 2018 and January 2019 had been satisfied and that these notes appeared to be written and signed by the landlord. As a result I accept the tenant paid the rent for those 2 months, and on balance of probabilities, I accept that the tenant also likely paid the rent for February 2019. As a result, I must **cancel** the 10 Day Notice to End of this matter, rendering it null and of no effect.

I find that when a landlord issues a 1 Month Notice to End it is their burden to prove they issued the Notice for valid and *sufficient* reason(s). Having cancelled the 10 Day Notice I find insufficient evidence the tenant has been repeatedly late paying rent.

I further find that the landlord has not provided *sufficient evidence* supporting that the tenant’s conduct has placed the landlord’s property at *significant* risk. I also find the landlord has not provided *sufficient evidence* indicating the tenant engaged in illegality with the likelihood of damage. In addition, I find that the landlord has not sufficiently supported or proven that the tenant’s conduct *adversely affected* the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property. Moreover, the landlord has not provided sufficient cause to end the tenancy. As a result of all the above I must **dismiss** the landlord’s 1 Month Notice to End, rendering it null and of no effect.

The landlord has failed to establish entitlement to an Order of Possession for either Notice to End issued the tenant, or for a Monetary Order for unpaid rent. As a result their application is dismissed in its entirety

Again, it cannot be overstated that the parties' have endured an abundance of tenancy disputes in the last year with what appears to have had little impact on improving the tenancy relationship. It must be noted that the tenant has come perilously close to losing their tenancy and that the parties' failure to clarify matters related to the confirmation and payment of rent raises the spectre of continued dispute and stress.

### **Conclusion**

The Tenant's application to cancel the 10 Day Notice and 1 Month Notice of this matter is granted, with the result that the landlord's application is dismissed in its entirety, without leave to reapply.

It remains available to the landlord to issue a new Notice to End for valid and sufficient reason.

**This Decision is final and binding.**

*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 02, 2019

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Residential Tenancy Branch