



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a 10 Day Notice to End Tenancy for Non-Payment of Rent (the “Notice”).

Section 55 of the Act requires that when a tenant submits an application 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. An order of possession is granted if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Landlord’s agent, S.B., the Property Manager, and the Tenant A.P. The Parties provided affirmed testimony and were given the opportunity to present their evidence orally and in documentary form, and to make submissions at the hearing.

I have reviewed all documentary evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

Section 64 of the Act allows the Director to amend an application for dispute resolution. I note the name of the Landlord on the Application is inconsistent with the name of the Landlord on the tenancy agreement. In the hearing, the person identified as the Landlord in the Application identified herself as the Landlord’s Property Manager. Further, she did not indicate that the name of the Landlord on the tenancy agreement is no longer the Landlord. In addition, the Tenant provided documentary evidence that she had paid her rent to [H.R.], the person identified in the tenancy agreement as the Landlord. Accordingly, I find that it is more likely than not that the name of the Landlord

is [H.R.], as set out in the tenancy agreement. I, therefore, amend the Application pursuant to section 64 of the Act to correct the name of the Landlord on the Application and in this decision letter.

The Property Manager said she received the Tenant's Application, but not the documentary evidence that the Tenant submitted to the Residential Tenancy Branch. The Tenant did not comment on the contents of the package she sent to the Property Manager. However, the documentary evidence that the Tenant uploaded to RTB consisted of a close-up photograph of money order that the Tenant said she had sent to the Landlord, and a copy of the Notice she said was served on her by the Property Manager. I will not consider the photograph of the money order, but I will consider the Notice, as the Property Manager acknowledged that she served this on the Tenant. Further, when we were considering the Notice in the hearing, the Property Manager found and read from the document, demonstrating that it was consistent with the Notice received by the Tenant. I am satisfied that the Property Manager had a copy of this piece of evidence before her, which I considered in the hearing.

#### Issue(s) to be Decided

- Is there a valid reason to cancel the Notice under the Act?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55(1) of the Act?

#### Background and Evidence

The Parties agreed that the tenancy began on October 3, 2017, with a monthly rental payment of \$855.00 that was due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$427.50 and no pet damage deposit.

The Parties agreed that the Property Manager served a Notice on the Tenant on February 21, 2019, by handing it to the Tenant's daughter. The Tenant said that her daughter is only 15 years old and that the Act does not allow a landlord to leave an eviction notice with a person under 19 years of age. However, the Tenant said that she received the Notice and was able to apply for dispute resolution in response to it within five days of having received it.

When we were considering the Notice in the hearing, the Property Manager read from her copy of the second page of the document. The heading at the top of the second page was: "Reasons for the One Month Notice to End Tenancy".

The Property Manager said that the grounds for the eviction notice that were listed on the second page included: "The Tenant is repeatedly late paying rent." This is consistent with the second page of the Notice that was served on the Tenant.

Other boxes that were checked for grounds of the eviction notice included: the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant of the landlord."

In the hearing, the Tenant said that she does not significantly interfere with another occupant. She said "I don't party or do drugs." The Tenant also noted that the second page of the document has the words "UNPAID RENT" written across a portion of the second page that has been whited out. She said it looks like the Property Manager re-used the second page of the Notice. The evidence before me is that the first page of the Notice was for a 10Day Notice to End Tenancy, but the second page of the Notice was page two of a One Month Notice to End Tenancy form.

The Property Manager said the Tenant has not paid rent since October 2018. The Tenant admitted not having paid rent since making a partial payment in February 2019.

### Analysis

Based on the documentary evidence before me and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find on a balance of probabilities that the second page of the Notice that the Property Manager served on the Tenant was from a One Month Notice to End Tenancy, not a 10 Day Notice to End Tenancy. As such, I find that the Notice that was served on the Tenant was inconsistent with section 52 of the Act.

The relevant subsections of section 46 of the Act state:

**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]*.

Section 52 of the Act states:

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, **state the grounds for ending the tenancy**,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) **when given by a landlord, be in the approved form.**

[emphasis added]

The ground for ending the tenancy with a 10 Day Notice under section 46 is that a tenant has failed to pay a landlord the rent that was due. However, the Notice that the Tenant received consisted of the first page from the 10 Day Notice and the second page from a One Month Notice. I find that the Notice was not in the approved form, pursuant to section 52 of the Act. Accordingly, I find that the Notice was not valid. I therefore cancel the Notice and find that the Tenant is successful in her Application. I award the Tenant recovery of her \$100.00 filing fee that she may deduct from one rent payment once.

### Conclusion

The Notice was not in compliance with section 52 of the Act, as it was not in the approved form. The grounds for the Notice served on the Tenant were not applicable under section 46 of the Act, so the Notice is cancelled. I order that the tenancy continue in full force and effect unless and until it is ended in accordance with the Act.

I award the Tenant recovery of her **\$100.00** filing fee. I authorize the Tenant to deduct \$100.00 from one rent payment once in order to realize this award.

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 11, 2019

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Residential Tenancy Branch