



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR LRE

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities and an order limiting or setting conditions on the landlord's right to enter the rental unit.

The hearing did not conclude in the time scheduled and was adjourned to later in the day to continue. The tenant and the landlord attended the hearing on both occasions, and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice(s) to End Tenancy for Unpaid Rent or Utilities was/were issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that an order should be made limiting or setting conditions on the landlord's right to enter the rental unit?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on September 15, 2018. Rent in the amount of \$2,500.00 per month is payable on the 1<sup>st</sup> day of each month. No security deposit or pet damage deposit was collected by the landlord. The rental unit is a lake front single family dwelling.

The landlord further testified that there is no written tenancy agreement. The landlord filled one out and left it for the tenant to complete and sign but the landlord did not receive back a signed copy. The one provided as evidence for this hearing by the tenant is incomplete and contains no signatures of the landlord or the tenant.

The tenant failed to pay rent when it was due and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Copies of 2 such notices have been provided as evidence for this hearing by the tenant and both are signed by the landlord. The first is dated March 12, 2019 and contains an effective date of vacancy of March 14, 2019 for unpaid rent in the amount of \$2,500.00 that was due on March 1, 2019. The landlord testified that he served it personally to the tenant on March 12, 2019.

The second is dated March 12, 2019 and contains an effective date of vacancy of March 23, 2019 for unpaid rent in the amount of \$2,500.00 that was due on March 1, 2019. The landlord is not aware of that Notice, and testified that only the one effective March 14, 2019 was actually served to the tenant, and the landlord agrees that the effective date is incorrect.

The tenant paid \$1,300.00 on March 18, 2019 and another \$500.00 on March 20, 2019 for which the landlord gave a receipt for \$1,800.00 on March 21, 2019. A copy has been provided as evidence for this hearing and it also states that it is accepted for use and occupancy only and does not serve to reinstate the tenancy.

**The tenant** testified that he completed the tenancy agreement and signed it, but did not receive back a signed copy from the landlord.

The parties had been to a dispute resolution hearing on March 7, 2019 and the resulting Decision has been provided as evidence for this hearing. It is dated March 8, 2019 and states that the hearing was convened concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent and an application made by the tenant seeking an order that the landlord make emergency repairs. It also states that the landlord submitted no evidence to support outstanding rent, and the Arbitrator was not satisfied that the tenant failed to pay rent when the Notice to End the tenancy was issued. The landlord's application for an Order of Possession and a monetary order to recover unpaid rent for October, November, January and February were dismissed. The landlord's application to recover unpaid rent for March was dismissed with leave to reapply. The tenant's application was also dismissed with leave to reapply.

The tenant further testified that another person who rents a room from the tenant in the rental unit paid the landlord \$700.00 on March 7, 2019, right after the hearing. The tenant disagrees that the landlord is owed another \$700.00 for March rent.

The tenant also agrees that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to him on March 12, 2019, and that the landlord served evidence by putting it in the tenant's vehicle. The tenant further testified that he is currently under an order to have no contact with the landlord and another person, and to not attend at the rental address, but is going to Court tomorrow to have the conditions removed.

### Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in the Notice, which must be no less than 10 days after service.

In this case, the parties agree that the landlord served the Notice on March 12, 2019 personally to the tenant. The parties also agree that the tenant paid \$1,300.00 on March 18, 2019 and another \$500.00 on March 20, 2019. The parties do not agree on the amount of rent currently outstanding, however having received the Notice on March 12, the tenant would be required to pay the rent in full or dispute it by March 17, 2019. March 18 and March 20, 2019 are both outside the 5 day period. The tenant filed the Application for Dispute Resolution on March 22, 2019, which is also outside the 5 day period. Therefore, I find that the tenant did not pay the rent in full or dispute the Notice within 5 days, and the tenant is conclusively presumed to have accepted the end of the tenancy, and the tenant's application must be dismissed.

The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that contains an effective date of vacancy of March 14, 2019. The parties agree that it was served to the tenant personally on March 12, 2019 and I find that it is in the approved form. I also find that it contains information required by the law, however the effective date of vacancy is changed to the nearest date that complies with the *Act*, being March 22, 2019. Since that date has passed, I grant the Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

Since the tenancy is ending, I decline to make any orders with respect to limiting or setting conditions on the landlord's right to enter the rental unit.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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 29, 2019

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Residential Tenancy Branch