



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, MNDT

### 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 July 4, 2019, to cancel a One Month Notice to End Tenancy for Cause, issued on May 27, 2019, and for a monetary order for money owed or loss under the Act..

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

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

In this matter the tenant has named the wrong landlord in their application. Therefore, I find it appropriate to amend the tenant’s application to reflect the correct landlord. I find this is not prejudicial to either party.

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 two Notices 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 two Notices to End Tenancy. The balance of the tenant's application is dismissed, with leave to reapply.

### Issue to be Decided

Should the 10 Day Notice to End Tenancy for unpaid rent be cancelled?  
Should the One Month Notice to End Tenancy for Cause be cancelled?

### Background and Evidence

The tenant testified that they received the 10 Day Notice to End Tenancy for Unpaid rent on July 4, 2019, with an effective date of July 17, 2019.

The parties agreed that the tenant paid the outstanding rent on July 16, 2019, which was not paid within 5 days. The tenant has not paid August 2019 rent which was due and owing on the first day of the month.

The tenant testified that they did not pay rent because they believe the landlord has breached the Act. The tenant confirmed they did not have the authority under the Act, to withhold rent.

### Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

### **Rules about payment and non-payment of rent**

***26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the***

*tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

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.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant admitted rent was not paid within 5 days after receiving the 10 Day Notice to End for Unpaid Rent.

The tenant acknowledged that they did not have the authority under the Act to withhold the rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. I find the tenancy legally ended on the effective date in

the 10 Day Notice to End Tenancy for Unpaid rent, which was July 17, 2019. Therefore, I dismiss the tenant's application without leave to reapply.

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.

As occupancy rent for August 2019, has not been paid and I have found the tenancy legally ended on July 17, 2019, 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.

As I have found the tenancy has legally ended on the basis of unpaid rent. I find I do not need to consider the merits of the One Month Notice to End Tenancy for Cause; however, I note the tenant did not make their application to dispute the notice within the statutory time limit and the tenancy would have ended in any event.

### 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: August 02, 2019

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Residential Tenancy Branch