



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF

### 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 23, 2019

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.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The parties began a one-year fixed term tenancy that began on December 1, 2018 and was to expire November 30, 2019. Rent in the amount of \$6,000.00 was payable on the first of each month. A security deposit of \$3,000.00 was paid by the tenant.

The parties agreed that the tenant was served the Notice issued on July 23, 2019. The Notice indicated that the tenant had failed to pay rent in the amount of \$11,004.02. The parties agreed that amount should have been \$10,623.91. I find it reasonable to correct the Notice to the correct amount.

The landlord testified that the tenant did not pay all rent owed for June 2019 and no rent for July 2019. The landlord stated on August 2, 2019, the tenant paid by e-transfer the amount of \$1,200.00 and on August 3, 2019, the tenant gave them a cheque for the balance due; however, the cheque was cancelled by the tenant.

The landlord testified that the tenant has not paid any rent since the August 2, 2019 payment, and rent for August and September 2019, have not been paid.

The tenant testified that they paid \$1,000.00 on July 1, 2019, which was not accounted. The tenant agreed that they paid \$1,200.00 on August 2, 2019. The tenant testified that the cheque that they had given to the landlord on August 3, 2019, in the amount of \$9,423.91 was on their overdraft account and the bank had blocked the cheque. The tenant testified that on August 15, 2019, they paid the balance by certified cheque.

The landlord argued they never received a certified cheque from the tenant for the balance due and the tenant has not paid rent for August and September 2019.

The tenant responded that the certified cheque was stolen and not actually given to the landlord.

### Analysis

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

#### **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]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.

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.

In this case, the parties agreed that the amount owed as of July 23, 2019, was the amount of \$10,632.91, at the time the Notice was issued. The tenant made an application to dispute the Notice on July 26, 2019.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenant's rent was not paid within 5 days after receiving the Notice, which the tenant's last day to pay the rent under the Notice was July 28, 2019.

The tenant made a payment of \$1,200.00 toward the outstanding rent on August 2, 2019, this was not within 5 days and was not the full amount due.

Further, the tenant gave the landlord a cheque on August 3, 2019, which was non-negotiable and further alleged they gave the landlord a certified cheque on August 15, 2019 to replace the cheque. However, only after further questioning did the tenant say the certified cheque was stolen before giving it to the landlord. This was a clear attempt to mislead the evidence.

Even if I accept the tenant's testimony, which I do not, rent was not paid as required by the Act. The tenant has not paid the outstanding rent of \$9,431.19 by and has not paid any rent for August and September 2019. I find the tenant has breached the Act. I find the Notice issued on July 23, 2019, is valid and remains in full force and effect. I find the tenancy legally ended on August 3, 2019 and the tenant is overholding the premise.

Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant was not successful with their application the tenant is not entitled to recover the filing fee from the landlord.

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.

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.

### 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: September 24, 2019

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Residential Tenancy Branch