



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LANTERN PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**

**CNR MT**

**FFL OPRM-DR**

### **Introduction**

This hearing dealt with applications from both the landlord and the tenant pursuant to the Residential Tenancy Act ("Act").

The tenant applied for:

- An order to cancel a 10 Day Notice for Unpaid Rent or Utilities pursuant to section 46; and
- A request for more time to cancel a Notice to End Tenancy pursuant to section 66.

The landlord applied for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- An order of possession and a monetary order for unpaid rent, by direct request pursuant to sections 46 and 55.

The landlord attended the hearing, represented by property manager, JH ("landlord") and witness, SG, the resident manager. The tenant attended the hearing and was assisted by his mother, NT. As both parties were in attendance, service of documents was confirmed. Both parties acknowledged receipt of one another's Applications for Dispute Resolution Proceedings and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of their applications.

### **Preliminary Issue**

The tenant applied for more time to cancel a Notice to End Tenancy pursuant to section 66. The landlord consents to this application and agrees to have the case heard on the merits of the evidence presented.

### **Preliminary Matters**

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute

during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issue a decision to resolve this dispute.

Issue(s) to be Decided

Should the 10 Day Notice for Unpaid Rent be upheld or cancelled?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was presented as evidence by the landlord. The fixed one year tenancy began on January 1, 2015 with rent set at \$705.00 per month. At the conclusion of the one year, it became month to month. A security deposit of \$358.50 was collected which the landlord continues to hold. As of August 1, 2018, rent is now \$800.00 per month.

The landlord provided the following testimony. Since the tenancy began, the tenant has been repeatedly late in paying rent or had insufficient funds in his account. The landlord has been trying to work with the tenant and his parents to find a solution to the rent issues. The landlord's witness SG testified that the tenant was initially a wonderful tenant until he began to pay rent late or stopped paying rent altogether. In July 2019, he received multiple calls from the tenant yet no rent has been paid August or subsequent months. Multiple excuses were offered but no actual payment of rent came in.

On August 6, 2019 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice") by posting it to the tenant's door. The tenant acknowledges receiving it that day, however notes the Notice was served by being slid under his door. The effective date on the Notice was August 19, 2019.

The tenant acknowledges rent for the month of August was not paid. He attributes the insufficient funds in his account to complications at his bank which is being investigated. He also indicated that there was an irregularity in 3 previous payments coming out of his account putting him in a position where he had to 'play catch up'. He also attributes it to the fact that his lawyer takes an administrative share of the funds supplied to him from Worker's Compensation Board which he didn't anticipate.

The tenant testified that when he was served with the Notice, he sought legal advice and support from an aid society who advised him to discontinue paying rent until the dispute was resolved by dispute resolution.

The tenant testified the relationship between he and the resident manager had fallen out, leading him to deal directly with 'head office' of the landlord. He now has a plan set up with his bank for pre-approved withdrawals and states he is otherwise a good, quiet and clean tenant. A Worker's Compensation settlement will pay his rent indefinitely on his behalf.

### Analysis

Sections 46(4) and (5) of the Act state:

- (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.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

I find the tenant was served with the 10 Day Notice on August 6, 2019 in accordance with sections 89 and 90 of the Act. The tenant filed an application to dispute the Notice on August 15, 2019. The landlord does not take issue with the timeliness of the tenant's Application for Dispute Resolution.

Section 26 of the Act states 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.

In this case, the tenant has acknowledged he did not pay rent for August or any time thereafter on the advice of the society he consulted. Unfortunately, the advice given to the tenant was contrary to the Act. As stated in section 26, a tenant must pay rent when it is due under the tenancy agreement. The only exception is if a tenant has a predetermined right to deduct all or a portion of it. The tenant has not provided any evidence of any such right.

As the tenant has not paid the outstanding rent within 5 days of receiving the Notice as required by section 46(4) of the Act, I uphold the landlord's 10 Day Notice to End Tenancy issued on August 6, 2019.

Section 55 states:

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 have examined the landlord's notice and find that it complies with the form and content provisions of section 52 of the *Act*, which states that the notice 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, and (e) when given by a landlord, be in the approved form.

The effective date stated on the Notice has passed. I therefore grant the landlord and Order of Possession effective two days after service upon the tenant.

As the tenant has acknowledged not paying rent for the months of August, September and October 2019, the landlord is entitled to a monetary order for 3 months of rent. In accordance with section 67 of the *Act*, I award the landlord a monetary order in the amount of **\$2,400.00**. ( $\$800.00 \times 3 = \$2,400.00$ ).

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of **\$358.50**. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
Rent for August, September and October 2019	\$2,400.00
Filing fee	\$100.00
Less security deposit	(358.50)
<b>Total Monetary Order</b>	<b>\$2,141.50</b>

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of **\$2,141.50**.

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: October 11, 2019

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Residential Tenancy Branch