



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR FFT  
                             OPRM-DR FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent and to recover the filing fee from the landlord for the cost of the application. The landlord originally applied by way of the Direct Request process for an Order of Possession and a monetary order for unpaid rent and to recover the filing fee from the tenant, which was joined to be heard with the tenant's application in this participatory hearing.

The tenant and an agent for the landlord attended the hearing 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, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

### Background and Evidence

**The landlord's agent** (hereafter referred to as the landlord) is a property manager for a property management company and another property manager has primarily dealt with this tenancy.

The landlord testified that this tenancy began on October 1, 2014 and the tenant still resides in the rental unit. The tenancy agreement, a copy of which has been provided as evidence for this hearing specifies rent in the amount of \$800.00 per month, payable on the 1<sup>st</sup> day of each month, however rent was reduced at some point to \$750.00 per month. The landlord agrees that the rental amounts claimed and/or received from the tenant amount to \$750.00 per month starting from the beginning of the tenancy.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 as well as a pet damage deposit in the amount of \$100.00, both of which are still held in trust by the landlord. The rental unit is described as a coach house.

The landlord further testified that the tenant has been in arrears of rent for several months, and has provided a Direct Request Worksheet setting out the amounts due and paid from 2014 to 2019. Arrears are currently \$6,670.00 including this month.

On August 22, 2019 the landlord served the tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy has been provided for this hearing and it is dated August 22, 2019 and contains an effective date of vacancy of September 2, 2019 for unpaid rent in the amount of \$6,945.00 that was due on August 13, 2019.

Since the notice to end the tenancy was served, the tenant paid \$500.00 on August 23, another \$500.00 on September 6, another \$300.00 on September 9 and \$500.00 on September 23, 2019. Copies of receipts for the August 23 and September 6, 2019 payments have been provided for this hearing and both state: "Receipt of Payment For Use & Occupancy Only." The landlord concedes that the amount of arrears to date, including this month's rent amounts to \$6,410.00 after all late fees and payments are adjusted.

**The tenant** testified that he questioned the property manager he had primarily dealt with about arrears prior to being served with the notice and was told that the landlord was not looking to kick out the tenant. The tenant was aware he was behind in rent about \$6,000.00, but the property manager didn't mention it. The tenant does not agree that he owes over \$7,000.00 as claimed. Copies of numerous text messages exchanged between the parties have been provided for this hearing setting out the amounts paid and dates.

The tenant has had some serious personal and financial set-backs, but is employed and has been residing in the rental unit for 5 years. If evicted, the tenant will be homeless, and has no family in the area.

The tenant offers to pay the arrears in installments and has doubled-up on rent payments over the last few months. October's rent will be paid tomorrow.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. The *Act* also states that a landlord may end a tenancy for unpaid rent, and that once served with the Notice the tenant has 5 days to pay the rent or dispute it. In this case the tenant disputed the Notice but has not paid the rent.

I have reviewed all of the evidentiary material, and I am satisfied that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) is in the approved form and was duly served on the tenant on August 22, 2019.

I have also compared the copies of text transfers provided by the tenant to the landlord's Direct Request Worksheet, and all payments proved by the tenant in the text messages have been accounted for in the landlord's Direct Request Worksheet.

In the circumstances, I find that the tenant has not paid the rent and the landlord is entitled to an Order of Possession, and I dismiss the tenant's application. Since the effective date of vacancy in the Notice has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

The tenant agreed that he is in arrears of rent somewhere close to \$6,000.00 and that October's rent will be paid tomorrow. I find that the landlord has established a claim of \$6,410.00 including October, 2019 rent.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord has not applied for an order permitting the landlord to keep the security deposit in partial satisfaction of the claim, and I leave it to the parties to deal with the security deposit and pet damage deposit in accordance with Section 38 of the *Residential Tenancy Act*.

### Conclusion

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

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

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$6,510.00.

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: October 04, 2019

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Residential Tenancy Branch