



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR FFT LRE MNDCT OT

### 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; an order limiting or setting conditions on the landlord's right to enter the rental unit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The tenant also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

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?
- Should the landlord's right to enter the rental unit be ordered to be limited or allowed conditionally?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment of the rental unit?

### Background and Evidence

**The tenant** testified that this tenancy began on July 1, 2019 as a fixed term to expire on December 31, 2019. A typewritten agreement has been provided for this hearing which is signed by the tenant and the landlord specifying rent in the amount of \$925.00 per month, but is silent on the date that rent is payable. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$462.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a room in the lower suite of the landlord's home shared with 3 other tenants who have separate tenancy agreements with the landlord, and with the rest of the suite being shared by all tenants.

The tenant further testified that on August 2, 2019 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by taping it to the door, a copy of which has been provided for this hearing. It is dated August 2, 2019 and contains an effective date of vacancy of August 15, 2019 for unpaid rent in the amount of \$925.00 that was due on August 1, 2019.

The landlord served another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to the tenant on August 6, 2019, and a copy has been provided for this hearing. It is dated August 6, 2019 and contains an effective date of vacancy of August 12, 2019 for unpaid rent in the amount of \$925.00 that was due on August 1, 2019.

The tenant also testified that every single day the landlord enters the rental suite without notice or permission. The landlord also enters the suite to do laundry, but the landlord has her own laundry facilities. The landlord also uses the kitchen like it's her own. The landlord is very confrontational and other tenants are afraid of her. The landlord has told tenants that she will be there doing laundry or using the kitchen whenever she wants and if tenants don't like it, they can move out. The tenancy agreement says nothing about the landlord providing housekeeping.

On July 28, 2019 the landlord started renovations turning the 3 bedroom unit to a 5 bedroom unit, which has caused the tenants to lose the living room for in excess of a week.

The tenant has also provided a Monetary Order Worksheet setting out the following claims:

- \$100.00 as recover of the filing fee;
- \$100.00 for 4 hours off work on Aug 15 to make copies and photographs;
- \$150.00 for 6 hours off work on Aug 28 to file the application;
- \$50.00 for 2 hours off work on Sep 30 to resubmit additional evidence;

- \$50.00 for 2 hours off work on Oct 1 to resubmit evidence from RCMP; and
- \$50.00 for 2 hours off work on Oct 15 to deal with the hearing;
- for a total of \$600.00.

**The tenant's witness** testified that he is one of the tenants residing in the rental unit and this is the 3<sup>rd</sup> month of his tenancy. The landlord enters the rental unit regularly without any permission from tenants.

During renovations, the living room was removed from the north side and a new one being formulated on the south side, but the tenants had no living room for 10 days or so.

**The landlord** testified that she issued the second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities out of frustration, then found out it wasn't a good idea so the landlord has not acted on it. The tenant has not paid any rent for August, September or October, 2019 and is currently in arrears of rent the sum of \$2,775.00.

The landlord had applied by way of the Direct Request process for an Order of Possession and a monetary order however because the tenancy agreement is silent on the day in the month rent is due, the application was adjourned to a participatory hearing. At the hearing, the tenant did not attend and the landlord was not able to prove that he was served with the Hearing Package, so the landlord's application was dismissed with leave to reapply. The landlord testified that the subject of the application was the first 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The landlord further testified that the laundry facilities in the landlord's home are not working, so the landlord has been using the laundry room downstairs.

The tenant changed the lock to his room and the landlord doesn't have a key, so has not entered that room. The landlord later clarified that the landlord bought the lock and gave it to the tenant in a package to install, and didn't receive a key from the tenant.

Most renovations are completed, but some are still pending. The landlord testified that she talked to tenants and they said it was okay for the landlord to enter the rental unit because the landlord wasn't entering any bedrooms, just the common areas. The landlord asked an Advocacy group and the Residential Tenancy Branch, who all said that the landlord could enter common areas, but not bedrooms without 24 hours notice.

The landlord also submitted that if an Order of Possession is granted, the landlord would be content with an effective date of vacancy of October 31, 2019.

## Analysis

Firstly, the *Residential Tenancy Act* states that a tenant must pay rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement. In this case, the tenant does not dispute that no rent has been paid for August, September or October, 2019.

In the event that a tenant fails to pay rent when it is due, the landlord may end the tenancy by giving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant then has 5 days to pay the rent or dispute the Notice. If the tenant pays the rent, the Notice is of no effect. In this case, the tenant didn't pay the rent, but disputed the Notice.

I have reviewed the first 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2019, and I find that it is in the approved form and contains information required by the *Act*. Given that the tenant has failed to pay the rent, which is contrary to the law, I dismiss the tenant's application to cancel it.

The *Residential Tenancy Act* specifies 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. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. During the hearing, the landlord indicated that she would be content with an Order of Possession effective at the end of October, 2019, and I so order.

With respect to the tenant's monetary claim, the Monetary Order Worksheet claims loss of wages to prepare for this hearing, which is not a claim permissible under the *Residential Tenancy Act*. The tenant expressed during the hearing that he was very confused on the process and the rules, and I accept that. In order to be successful in a monetary claim for any damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The tenant's position is that the landlord continuously enters the rental unit without notice and without colour of right. The landlord's position is that the areas that the

landlord enters are common areas only and each tenant rents individual rooms and has access to the common areas. I have reviewed the "Lease Agreement," which is not entirely lawful, but states: "Lease Agreement to rent one room." The tenant has provided copies of notices about the landlord or contractors entering the rental suite, but has not established that the landlord has entered the tenant's room without notice or without the tenant's permission. Therefore, I find that the tenant has failed to establish that the landlord has failed to comply with the tenancy agreement or the *Residential Tenancy Act* and I dismiss the tenant's monetary claim.

Similarly, I find that the tenant has failed to establish that the landlord's right to enter the rental unit should be ordered to be limited or allowed conditionally.

Since the tenant has not been successful with the application the tenant is not entitled to recovery of the filing fee.

### 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 at 1:00 p.m. on October 31, 2019.

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 15, 2019

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Residential Tenancy Branch