



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding METCAP LIVING MANAGEMENT INC and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, RR, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 23, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a 10 Day Notice for unpaid rent or utilities (the "10 Day Notice") dated October 9, 2019;
- a rent reduction; and
- an order granting the return of the filing fee.

The Tenant, the Landlord's Agents, S.P and J.S., and the Landlord's Counsel, M.F., attended the hearing and provided affirmed testimony.

The Tenant stated that he served his Application and documentary evidence to the Landlord in person. The Landlord's Agents confirmed receipt. The Landlord's Agents stated that they served the Tenant a copy of the Landlord's documentary evidence by registered mail, as well as in person. The Tenant confirmed receipt. In the absence of evidence to the contrary, and pursuant to section 71 of the *Act*, I find the above-mentioned documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenant's request for a rent reduction is dismissed with leave to reapply.

### Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice dated October 9, 2019, pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

### Background and Evidence

The parties testified and agreed that the tenancy began on April 30, 2004. Currently, rent in the amount of \$1,176.00 is due to be paid to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$430.00 which the Landlord continues to hold.

The Landlord's Agents testified the Tenant did not pay rent in the amount of \$1,145.00 when due on October 1, 2019. Subsequently, the Landlord issued a 10 Day Notice dated October 9, 2019 with an effective vacancy date of October 24, 2019.

The Landlord's Agents stated that they served the 10 Day Notice to the Tenant by registered mail as well as in person, however, could not recall the dates of service. The Tenant confirmed that he received the 10 Day Notice, however, could not recall which date it was received. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenant had five days to dispute the Notice

The Landlord's Agents stated that the Tenant has not paid any amount towards the outstanding balance of rent owing and has also failed to pay rent for the month of

November and December 2019. The Landlord is seeking an order of possession in relation to the unpaid rent.

In response, the Tenant confirmed that he has not paid any amount of rent within 5 days of receiving the 10 Day Notice. Furthermore, the Tenant stated that he has not paid rent for November and December 2019. The Tenant stated that he felt entitled to withholding the rent as the Landlord has not changed the carpets in the rental unit which are stained from previous floods which have damaged the rental unit.

### Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 46 of the Act states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

In relation to the 10 Day Notice dated October 9, 2019, the Landlord's Agents could not recall when the 10 Day Notice was served to the Tenant. While the Tenant confirmed receipt of the 10 Day Notice, the Tenant could not recall when he received the 10 Day Notice. While I am satisfied that the 10 Day Notice was sufficiently served to the Tenant pursuant to Section 88 of the Act, I find that I am unable to determine if the Tenant disputed the 10 Day Notice in accordance with Section 46(4) of the Act.

Regardless, I accept that the parties agreed that the Tenant has not paid any amount towards the outstanding balance of rent as indicated on the 10 Day Notice and has also failed to pay rent for November and December 2019. I find that the Tenant was not entitled to withhold rent as he was unsatisfied with the Landlord's response to his request for new carpet in his rental unit. The Tenant was at liberty to make an application for dispute resolution seeking an order for repairs, should he felt that the Landlord was breaching the Act or the tenancy agreement. Therefore, the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order should be served onto the Tenant as soon as possible. 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 the Tenant was not successful with his Application, I find that he is not entitled to the return of the filing fee.

### Conclusion

The Tenant breached Section 26 of the Act by not paying rent when due to the Landlord. The Tenant's Application is dismissed without leave to reapply. The Landlord is granted an order of possession effective 2 days after service on the Tenant. The order should be served as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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: December 16, 2019

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Residential Tenancy Branch