



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities.

Two of the three applicant tenants attended the hearing, who also represented the other tenant. The landlord also attended the hearing with a witness. The tenants and the landlord and the landlord's witness each gave affirmed testimony, and the parties were given the opportunity to question each other and the witness.

No issues with respect to exchange of evidence were raised, and all evidence provided by the parties 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?

### Background and Evidence

**The landlord** testified that this fixed term tenancy began on March 30, 2019 and expires on March 30, 2020, and the tenants still reside in the rental unit. Rent in the amount of \$1,450.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$725.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a top floor condominium apartment in a 5 story building. A copy of the tenancy agreement has been provided as evidence for this hearing.

In July, 2019 the landlord only received \$483.33, and once rent became due in August, 2019 the balance due was \$2,416.67. The tenants paid \$375.00 on August 13 and another \$1,133.00 on August 31 leaving a balance of \$908.67 owed.

On August 3, 2019 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing a copy to a tenant, as well as posting a copy to the door of the rental unit and by sending it by email. A copy of has been provided as evidence for this hearing and it is dated August 3, 2019 and contains an effective date of vacancy of August 13, 2019 for unpaid rent in the amount of \$764.99 that was due on August 1, 2019.

In September, 2019 the tenants paid \$483.33 and another \$483.33, but September's rent of \$1,450.00 was also due, which brought the arrears to \$1,392.01.

The landlord also served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 13, 2019 by personally handing a copy to each of the 3 tenants. A copy has been provided for this hearing and it is dated September 13, 2019 and contains an effective date of vacancy of September 13, 2019 for unpaid rent in the amount of \$822.00 that was due on September 1, 2019.

When October's rent became due, the arrears were \$2,842.01. The tenants paid \$483.33 on October 24 bringing the arrears down to \$2,358.68. Rent for November, 2019 increased the arrears to \$3,808.68, and no rent has been paid for November or December, 2019. Arrears are now at \$5,258.68.

The landlord has also provided a copy of a Tenant Ledger which sets out payments of rent due and paid as well as other information regarding the tenancy. The landlord testified that since the latest notice to end the tenancy was given, the tenants have paid \$483.33 on October 25, 2019. No receipts have been provided for that payment, and the landlord testified that she provided a copy of her bank records as a receipt to illustrate that no rent had been received other than on October 25, 2019.

**The landlord's witness** is the tenant's mother and collects rent on behalf of the landlord. In the beginning, the tenants paid rent on time and the witness provided receipts for any money received on behalf of the landlord. The witness believes there were 3 receipts given, but no rent received since August, 2019.

**The first tenant** (VLH) testified that 3 tenants share the rental unit and each has a responsibility to pay 1/3 of the rent, being \$483.33 each which they receive between the 20<sup>th</sup> and 25<sup>th</sup> of each month. One of the tenants pays by direct deposit to the landlord

each month from his shelter allowance and the other 2 tenants mail it to the landlord or give to the landlord's mother.

The tenant further testified that there have been 2 prior hearings. One was for rent, but it's clear that the landlord just doesn't want the tenants there. The landlord also wanted the tenant to sign a Power of Attorney to have free reign of the tenant's disability money, but the tenant was advised to not sign it.

**The second tenant** (BGB) testified that rent has been paid in full, but this month's rent has not yet been paid.

### 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*.

In this case, the landlord's testimony does not match the evidence provided by the landlord. The landlord testified, and has provided a tenant ledger showing that once rent became due in August, 2019 the balance due was \$2,416.67. However the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 3, 2019 says that the tenants failed to pay rent in the amount of \$764.99 that was due on August 1, 2019. I would expect it to say that \$2,416.67 was due on August 1, 2019.

Also, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 13, 2019 states that the tenants failed to pay rent in the amount of \$822.00 that was due on September 1, 2019. The landlord testified and has provided a tenant ledger showing that as of September 1, 2019 when rent became due the tenants were in arrears the sum of \$2,368.77, and paid \$483.33 on September 10, which would bring the arrears to \$1,875.34 at the time the Notice was issued.

Further, a landlord must not refuse rent, but if a landlord accepts rent after the effective date of a notice to end a tenancy for unpaid rent, the landlord must make it clear to the tenant that the money is being accepted for use and occupancy of the rental unit only and that the acceptance of rent money does not serve to reinstate the tenancy. In this case, the landlord testified that rent was received on October 24, 2019 but the effective date of vacancy contained in the latest 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is September 13, 2019. The *Act* states that incorrect effective dates in such a notice are changed to the nearest date that complies with the law, which I find is September 23, 2019.

Considering the above elements in the testimony and evidence before me, I am not satisfied that the landlord has established that rent is owed or what the amount might be. I am not satisfied that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 3, 2019 or the one dated September 13, 2019 were issued in accordance with the *Residential Tenancy Act*, and I cancel them. The tenancy continues.

### Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 3, 2019 is hereby cancelled.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 13, 2019 is hereby cancelled and the tenancy continues.

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 04, 2019

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Residential Tenancy Branch