



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RP

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), and a request for repairs.

I note that Section 55 of the *Act* requires that when a tenant submits an Application 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 Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord, the Landlord’s agent (the “Agent”). All parties provided affirmed testimony and were given the opportunity to present their evidence and to make submissions at the hearing. Neither party raised any concerns regarding the service of the Application, Notice of Hearing or the documentary evidence before me for consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision. At the request of the Tenant, copies of the decision and any orders issued in their favor will be mailed to the rental unit. At the request of the Landlord, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address provided in the hearing.

## Preliminary Matters

### **Preliminary Matter #1**

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a 10 Day Notice, I find that the priority claims relate to the payment of rent and whether the tenancy will continue or end. I find that the Tenant's claim for repairs to the rental unit are not sufficiently related to the 10 Day Notice or continuation of the tenancy and as a result, I exercise my discretion to dismiss it with leave to reapply.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the 10 Day Notice.

### **Preliminary Matter #2**

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

### **Preliminary Matter #3**

At the outset of the hearing I confirmed with the Landlord and Agent that I did not have any documentary evidence before me on behalf of the Landlord. The Agent stated that they had been in the process of gathering documentary evidence and requested permission to upload documentary evidence during the hearing for my consideration. The Agent acknowledged that this evidence had not previously been served on the Tenant or submitted to the Branch.

Rule 3.15 of the Rules of Procedure states that the Respondent must ensure evidence that they wish to rely on at the hearing is served on the Applicant and submitted to the Branch as soon as possible, and in any event, not less than seven days before the hearing.

The ability to know the case against you is fundamental to the dispute resolution process, and when a tenant disputes a Notice to End Tenancy served by a landlord, the Landlord bears the burden of proof to satisfy the Arbitrator that they had cause to serve the Notice and end the tenancy. Both the Agent and the Tenant acknowledged that prior to the hearing, the Landlord had not served on the Tenant any documentary evidence in relation to this hearing. Although the Agent stated that they had been in the process of gathering the documentary evidence, no testimony was provided by the Agent or Landlord to suggest, or to satisfy me, that this evidence was not available at least seven days prior to the hearing or that it could not reasonable have been made available through the exercise of due diligence on the part of the Landlord or Agent. As a result, I find that it would be a breach of both the Rules of Procedure and the principles of natural justice to accept the Landlord's late evidence in this hearing as it has not been served on the Tenant as required by the *Act* and the Rules of Procedure. As a result, I denied the Landlord's request to submit evidence during the hearing, and this decision has therefore been rendered on the basis of the documentary evidence before me from the Tenant and the testimony provided by both parties in the hearing.

#### Issue(s) to be Decided

Is there a valid reason to cancel the 10 Day Notice under the *Act*?

If the Tenant is unsuccessful in having the 10 Day Notice cancelled, is the Landlord entitled to an Order of Possession pursuant to Section 55(1) of the *Act*?

#### Background and Evidence

Although the parties agreed that a written tenancy agreement existed at the start of the tenancy, neither party submitted a copy of it for my review. The parties agreed that the tenancy began between 8-12 years ago, that the tenancy has always been month-to-month (periodic) and that rent in the amount of \$2,000.00 is currently due on the first day of each month.

The Landlord and Agent stated that the Landlord was having financial difficulty and as a result, a verbal mutual agreement to end tenancy had been reached with the Tenant in the fall of 2019, so that the property could be sold or otherwise used by the Landlord. The Agent stated that the property was previously listed for sale but has since been removed from the market. The Landlord and Agent stated that according to the verbal mutual agreement to end tenancy, the Tenant was to vacate the rental unit on

November 30, 2019, and that they were to receive October and November rent free as part of the agreement. The Agent stated that the Tenant received October and November rent free but failed to move out as scheduled or pay any further rent. The Agent stated that a 10 Day Notice was posted to the door of the Tenant's rental unit on December 21, 2019, stating that as of October 1, 2019, \$2,000.00 in rent was owed, and advising the Tenant that they needed to vacate the rental unit by December 31, 2019. The Agent stated that the Tenant continues to reside in the rental unit, that the tenancy has not been re-established, and that the Tenant owes but has not paid rent for occupancy of the rental unit for December, January, and February. No documentary evidence was submitted by the Landlord or Agent in support of their testimony.

The 10 Day Notice in the documentary evidence before me from the Tenant, dated December 21, 2019, has an effective vacancy date of December 31, 2019, and states that as of October 1, 2019, the Tenant owed \$2,000.00 in outstanding rent. The 10 Day Notice indicates that it was posted to the door of the Tenant's rental unit on December 21, 2019, and the Tenant confirmed receipt of the 10 Day Notice the following day, December 22, 2019.

The Tenant denied that a verbal mutual agreement to end the tenancy was reached in the fall of 2019 and instead stated that a verbal agreement was reached for him to vacate the rental unit on February 29, 2020, for only one month's compensation (February, 2020). As a result, the Tenant stated that February rent was not paid or owed. The Tenant stated that the Landlord is attempting to end the tenancy without serving a proper Four Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the *Act*. The Tenant stated that they have paid rent in full for October, November and December of 2019, and January of 2020, and do not owe rent for February 2020, as stated above. The Tenant did not submit documentary evidence in support of their testimony that rent was paid in full for October, November and December of 2019, and January of 2020, as they said that the Landlord has never issued rent receipts and that their bank account is currently frozen by a government agency so they cannot print off any bank statements showing these withdrawals/payments.

### Analysis

When a tenant files an Application to dispute a Notice to End Tenancy issued by a landlord, the landlord bears the onus to demonstrate in the hearing that they had cause to issue the Notice to End Tenancy. Although significant and conflicting testimony was

provided by the parties in relation to whether any rent was owed at the time the 10 Day Notice was served, the only documentary evidence submitted was the 10 Day Notice. Given the conflicting testimony of the parties with regard to whether any rent was owed at the time the 10 Day Notice was served, and the lack of documentary evidence from the Landlord, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that at the time the 10 Day Notice was served, the Tenant owed any amount of rent. As a result, I Order that the 10 Day Notice dated December 21, 2019, is cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

### Conclusion

I Order that the 10 Day Notice dated December 21, 2019, is cancelled as it is of no force or effect.

I Order that the tenancy continue until it is ended in accordance with the *Act*.

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: February 25, 2020

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Residential Tenancy Branch