



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent or utilities pursuant to section 46 of the *Act*.

The tenant BM attended the hearing via conference call. The tenant was given a full opportunity to be heard, to present sworn testimony, to make submissions. The landlord did not attend the participatory hearing.

The tenant testified that he had served the Dispute Resolution Hearing documents in person to the landlord on December 20, 2019. I find, based on the undisputed testimony of the tenant, that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

Rule of Procedure 7.3 states:

### 7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with the hearing.

### Issue(s) to be Decided

Are the tenants entitled to cancel the 10 Day Notice pursuant to section 46 of the *Act*?  
Is the landlord entitled to an order of possession for cause pursuant to sections 46 and 55 of the *Act*?

### Background and Evidence

The tenant testified that the rental unit comprises of a trailer on the same parcel of land as the home that the landlord occupies.

The tenant testified that the tenancy began in March 2018 and the monthly rent in the amount of \$ 950.00 including utilities is payable “generally” in the middle of the month.

The 10 Day Notice indicates that the tenant has not paid the full rent. The landlord served the 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), dated December 15, 2020 by serving the Notice in person. The Tenant disputed the Notice within 5 days.

Tenant BM testified that he filed the application on December 20, 2019 for Dispute Resolution. The landlord has not disputed the tenant’s application or filed any documents as evidence.

The tenant testified that he “believes” that he owes the landlord the sum of \$500.00 and denied that he owed the landlord \$5800.16 in rent arrears as indicated in the Notice. He testified that he occasionally worked for the landlord and the rent was deducted to compensate his employment.

### Analysis

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.

Section 46(5) says that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection

(4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

I find that the tenants were served with a valid Notice. The tenants did file an application to dispute the Notice within 5 days of its receipt. Tenant BM testified that he filed the application on December 20, 2019 for Dispute Resolution.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

The tenant statements were contradictory, he first testified that he owed approximately \$500.00 rent and then testified that "he did not owe anything" Yet the landlord has served a Notice on the tenant indicating the sum of \$5800.16 in rent arrears and has not filed any evidence to support the Notice. I find the evidence and testimony of the tenant to be confusing and contradictory. The tenant was unable to answer questions in relation to the utilities and the tenancy.

I find that the evidence in this application supports that the tenancy is based on a casual arrangement rather than a contractual relationship. I find that the landlord's claimed amount of unpaid rent in the Notice is not supported by evidence.

Pursuant to Rules of Procedure 7.4 Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

For these reasons, I find that the landlord has failed to attend the hearing and provide sufficient evidence to prove on the balance of probabilities any of the grounds set forth in the notice to end tenancy. Accordingly, I grant the tenants' application to cancel the Notice.

The Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

Conclusion

The Notice is cancelled and is of no force or effect and the tenancy continues until 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: March 06, 2020

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Residential Tenancy Branch