



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Skyline Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MT

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) served by the landlord; and
- an order extending the time to file an application disputing the Notice issued by the landlord.

The tenant and the landlord's agent (landlord) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Neither party raised any issue with service of the other's evidence or the tenant's application.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and 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 (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the tenant be granted more time to apply to cancel the landlord's 10 Day Notice and, if so, should the 10 Day Notice be cancelled?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

The written tenancy agreement shows that this tenancy began on November 1, 2010, for a beginning monthly rent of \$800.

The landlord proceeded first in the hearing to explain and support the 10 Day Notice.

The undisputed evidence is that the landlord served the tenant with the 10 Day Notice on January 2, 2020, listing \$843 in unpaid rent due on January 1, 2020. The effective move-out date listed was January 13, 2020. The tenant confirmed receiving the 10 Day Notice on January 2, 2020. The tenant submitted a copy of the Notice.

The landlord submitted that the tenant paid the monthly rent on January 11, 2020, but not the full amount as the tenant paid \$825.

The landlord objected that the issue for this hearing concerned the 10 Day Notice, but rather, the dispute was centered around the One Month Notice to End Tenancy for Cause (1 Month Notice) issued by the landlord to the tenant by registered mail on January 10, 2020, for repeated late payments of rent.

The tenant confirmed receiving the 1 Month Notice, but that he did not make an application to dispute that Notice; he said he only wanted to dispute the 10 Day Notice because that triggered the 1 Month Notice.

As to the 10 Day Notice, the landlord submitted that the tenant now owes unpaid rent in the amount of \$1,826, as he did not pay rent at all in April 2020, and only partial payments in February and March.

The landlord said that he required an order of possession of the rental unit because not only was the tenant not paying rent, he is allowing people in and out of the residential

property all the time. The landlord submitted these people have been frightening his other tenants in the residential property, particularly the elderly tenants. The landlord said that one guest of the tenant kicked in the metal door.

Tenant's response –

The tenant submitted that he cannot pay the rent now because he is not allowed roommates and he cannot afford the entire rent.

Extending the time to file an application disputing the Notice –

As to the tenant's request, he confirmed receiving the 10 Day Notice on January 2, 2020, and the records show he completed his application process on February 3, 2020.

The tenant submitted that he was unable to file his application sooner as he did not have the financial ability to do so until he received his EI payment.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

The 10 Day Notice provided information to the tenant, which explained that the tenant had 5 days to file an application for dispute resolution at the Residential Tenancy Branch (RTB) or Service BC in dispute of the Notice. It also explains that if the tenant did not file an application to dispute the Notice within 5 days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

In this case, the tenant confirmed he received the Notice on January 2, 2020, and was therefore required to file his application within 5 days, or January 7, 2020; instead, the tenant completed the filing requirements on February 3, 2020.

Due to the above, I find the tenant failed to submit his application within 5 days and is conclusively presumed to have accepted the end of the tenancy.

Section 66(1) of the Act authorizes me to extend the time limit for applying to set aside a Notice to End Tenancy only in exceptional circumstances. The word “exceptional” means that I am unable to extend this time limit for ordinary reasons. The word “exceptional” implies that the reason for failing to meet the legislated time lines is very strong and compelling. A typical example of an exceptional reason for not complying with the timelines established by legislation would be that the tenants were hospitalized for an extended period after receiving the Notice.

In this case, the tenant submitted that he did not have the financial ability to pay the filing fee; however, an applicant may request a fee waiver under certain circumstances wherein the filing fee is not required.

The records show that the tenant applied for and was granted a fee waiver and did not pay a filing fee for this application. Therefore, he had the ability to make his application within the required time frame and did not. I find the tenant submitted insufficient evidence of exceptional circumstances and dismiss the tenant’s application for more time to apply to cancel the Notice.

Due to all the above, I dismiss the tenant’s application seeking cancellation of the 10 Day Notice.

In reviewing the 10 Day Notice, I find it was on the RTB approved form with content meeting the statutory requirements under section 52 the Act.

As I have dismissed the tenant’s application, I find that the landlord is entitled to and I therefore grant them an order of possession of the rental unit effective 2 days after service upon the tenant, pursuant to section 55(1)(b) of the Act.

**Although I have ordered the tenancy will end pursuant to section 46 and 55 of the Act, I find the order of possession cannot be enforced until such time as the ORDER OF THE MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL, Emergency Program Act, Ministerial Order No. M089, (Ministerial Order) expires or is cancelled.**

I do not consider the merits of the 1 Month Notice, as that matter was not before me for consideration and the tenant did not wish to amend his application to include a request to cancel that Notice.

I note the landlord was highly concerned that the tenant would not have to pay rent until the Ministerial Order is lifted, in light of the tenant allegedly allowing people into the residential property who are frightening other tenants and kicking in doors.

The landlord may wish to consult with staff at the RTB to discuss his concerns about these issues and possible destruction of property. The contact information is included with this Decision.

### Conclusion

The tenant's application is dismissed, without leave to reapply, for the reasons given.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on the tenant, subject to the restrictions from the Ministerial Order as noted above.

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: April 7, 2020

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Residential Tenancy Branch