



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNR LRE OLC

### **Introduction**

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 9:40 a.m. to enable the landlord to participate in this scheduled hearing for 9:30 a.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenants provided sworn, undisputed testimony that the landlord was personally served with the tenant's application for dispute resolution package and notice of hearing on March 9, 2020. In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's application package and notice of hearing. Neither party submitted written evidence for this hearing.

Rule 7.3 of the Rules of Procedure provides as follows:

### **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.

The tenant confirmed receipt of a 10 Day Notice for Unpaid Rent on March 6, 2020.

At the outset of the hearing, the tenant confirmed that he no longer required the orders applied for. On this basis, the hearing proceeded with the tenant's application for cancellation of the 10 Day Notice. The remainder of the tenant's application was cancelled.

### **Issues**

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### **Background and Evidence**

The tenant provided the following undisputed testimony as the landlord did not attend.

The tenant testified that this month-to-month tenancy began on August 1, 2017, with monthly rent currently set at \$2,400.00., payable on the first of every month. The tenant paid a security deposit in the amount of \$1,200.00.

The tenant testified that the current landlord purchased the home approximately 3 months ago, and refused to accept his monthly rent. The tenant testified that the landlord had harassed him, and that he was served with a 10 Day Notice for Unpaid rent on March 6, 2020.

### **Analysis**

According to subsection 46(4) of the *Act*, a tenant may dispute a notice to end tenancy for unpaid rent by making an application for dispute resolution within 5 days after the date the tenant receives the notice. As the tenant filed his application within the time limit under the *Act*, the onus, therefore, shifts to the landlord to justify the basis of the 10 Day Notice.

Section 26 of the *Act* requires that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *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." I find the tenant had provided undisputed, sworn testimony that he had attempted to pay his rent, which was refused by the landlord. I find that the

landlord has failed to provide sufficient evidence to support that the tenant has failed to comply with section 26 of the *Act*.

Furthermore, Section 52 of the *Act* requires that the Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form. As neither party submitted a copy of the 10 Day Notice, I am unable to verify that the 10 Day Notice complies with section 52 of the *Act*.

Based on these circumstances I am allowing the tenant's application to cancel the 10 Day Notice dated March 6, 2020, and this tenancy is to continue as per the *Act*.

### **Conclusion**

I allow the tenant's application to cancel the 10 Day Notice for Unpaid Rent, which is hereby cancelled. The 10 Day Notice dated March 6, 2020 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The remainder of the tenant's application was cancelled.

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: May 4, 2020

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Residential Tenancy Branch