



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FFT

### Introduction

On August 26, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with F.Q. attending as his agent. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing and evidence package by registered mail on August 30, 2020. The Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package. As such, I have accepted the Tenant’s evidence and will consider it when rendering this Decision.

F.Q. advised that the Landlord’s evidence package was served to the Tenant by registered mail on September 18, 2020. The Tenant confirmed that he received this evidence. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the evidence package. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the most current tenancy agreement started on July 1, 2019. Rent was established in the amount of \$1,230.00 per month; however, half was due on the 6<sup>th</sup> day of the month and the remaining half was due on the 22<sup>nd</sup> day of the month. The Landlord's tenancy agreement did not specifically state this, though. A security deposit of \$1,150.00 was paid according to the tenancy agreement, and it was brought to the Landlord's attention that more than a half month's rent could not be collected for a security deposit, pursuant to the *Act*. He advised that the Tenant was allowed a pet, so half of the \$1,150.00 paid was actually attributed to the pet damage deposit.

The Tenant agreed that the most current tenancy agreement started on July 1, 2019, that rent was established in the amount of \$1,230.00 per month, and that it was due on the 6<sup>th</sup> day of the month and the 22<sup>nd</sup> day of the month. However, he alleges that there was no agreement that rent be paid on these dates in half installments. He stated that he made varying payments throughout the tenancy but would always pay the entirety of the rent outstanding for the month by the 22<sup>nd</sup> day of the month. He agreed that the \$1,150.00 paid was evenly divided as a security deposit and a pet damage deposit.

A copy of the signed tenancy agreement was submitted as documentary evidence.

The parties agreed that a 10 Day Notice to End Tenancy for Unpaid Rent, that was the subject of this dispute, was served to the Tenant on August 22, 2020 when it was posted to his door. This Notice was for rental arrears for August 2020 rent. The Tenant then made this Application to dispute the Notice.

F.Q. advised that a second 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") was served to the Tenant on September 7, 2020 by posting it to his door. The Tenant confirmed that he received this Notice "probably" on September 9, 2020. F.Q. stated that the Notice indicated that \$930.00 was owing for rent on September 6, 2020. The effective end date of the tenancy was noted as September 16, 2020.

The Tenant acknowledged that he has not paid the outstanding rent for September 2020. Furthermore, he did not amend this Application to dispute this Notice.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, with respect to the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent served on August 22, 2020, based on the provincial State of Emergency, this Notice could not be served for unpaid August 2020 rent. As such, this Notice is cancelled and of no force or effect. The tenancy continues until ended in accordance with the *Act*.

Regarding the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent served on or around September 7, 2020 for outstanding September 2020 rent, the Landlord was advised that as the Tenant did not amend his Application to dispute this, this Notice would not be considered when rendering this Decision and he is at liberty to apply for an Order of Possession as well as monetary compensation owed. However, the Landlord was cautioned that while he indicated on the Notice that the rent was due on September 6, 2020, as per the tenancy agreement, rent is owed on September 6 and September 22, 2020.

Should the Landlord apply for an Order of Possession on this Notice, it may not be considered a valid Notice. The Landlord may want to consider serving a new Notice.

Regardless, as the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent served on August 22, 2020 is not valid, this Notice is cancelled and of no force or effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. The Tenant may withhold this amount from the next month's rent,

### Conclusion

The Landlord's 10 Day Notice to End Tenancy for Unpaid Rent served on August 22, 2020 is cancelled and of no force or effect. 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: October 8, 2020

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Residential Tenancy Branch