



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

CNR

### **Dispute Codes**

### **Introduction**

The tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent dated September 11, 2020.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### **Issue(s) to be Decided**

Has the landlord complied with the law and regulations in order to issue the Notice? If so, is the Notice a valid Notice to End Tenancy?

### **Background and Evidence**

The rental unit is a single-room-occupancy dwelling. The tenancy started in September 2019. The current monthly rent is \$375.00, due on the first of each month. The landlord holds a \$187.50 security deposit.

The Notice demands the tenant pay \$2250.00 for rent due "Apr 1 – Sept 1, 20"

The tenant admits he has not paid rent for the months April to September 2020, a total of \$2250.00.

The parties have had various discussions about a rent repayment plan both before and after the ten day Notice.

On September 11 they met. The landlord proposed a repayment plan for the unpaid rent but says the tenant did not agree and so the ten day Notice was issued.

### Analysis

The Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation (OIC 449/2020, 474/2020 and 579/2020), alters the normal, ten day Notice remedy grant an unpaid landlord under s. 46 of the *Residential Tenancy Act* (the “RTA”).

The Regulation provides, among other things,

#### Non-payment of affected rent

3 (1) As an exception to sections 44(1)(a)(ii) and 46 [landlord’s notice: non-payment of rent] of the Residential Tenancy Act and any other provision of the Residential Tenancy Act and the Residential Tenancy Regulation, a landlord must not give a tenant notice to end a tenancy under section 46 (1) of the Residential Tenancy Act in respect of affected rent that is unpaid and instead this Division applies.

(2) The landlord must give the tenant a repayment plan if

(a) the tenant has overdue affected rent, and

(b) subject to subsection (3), the landlord and tenant did not enter into a prior agreement.

(3) If the landlord and tenant entered into a prior agreement and the prior agreement does not address the full amount of overdue affected rent, the landlord must give the tenant a repayment plan in respect of the amount of overdue affected rent that is not addressed in the prior agreement.

(4) The landlord may cancel a prior agreement by giving the tenant a repayment plan for the full amount of the overdue affected rent.

(5) The tenant may cancel a prior agreement by giving the landlord a repayment plan for the full amount of the overdue affected rent whether or not the landlord has given the tenant a repayment plan under subsection (3).

#### Terms of repayment plan

4 (1)

The following are terms of each repayment plan:

(a) the repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021;

- (b) the payment of the overdue rent must be in equal instalments;
  - (c) each instalment must be paid on the same date that rent is due under the tenancy agreement;
  - (d) the date the first instalment must be paid must be at least 30 days after the date the repayment plan is given by the landlord to the tenant.
- (2) A repayment plan must be in writing and include all of the following:
- (a) the date the repayment period starts as determined under subsection (1)(a); (b) the total amount of the affected rent that is overdue;
  - (c) the date on which each instalment must be paid;
  - (d) the amount that must be paid in each instalment.
- (3) If a repayment plan given by the landlord to the tenant under section 3 (2), (3) or (4)
- (a) does not comply with a requirement set out in subsection (1) of this section, (b) does not include the information described in subsection (2), or
  - (c) includes information that is inaccurate or incomplete,
- the landlord must give the tenant another repayment plan that complies with this section and includes accurate and complete information.

In this case, the rents due April to August 2020 were “affected rent” (that is, rent that came due and payable between March 18 and August 17, 2020) and the landlord was required to either obtain the tenant’s agreement to a repayment plan or to formulate a plan in accordance with the Regulation and deliver it on the tenant.

Section 6 of the Regulation states that a landlord may end a tenancy with a ten day Notice if “affected rent” is unpaid and the tenant fails to pay an installment of the date it is due, as set out in the applicable repayment plan or prior repayment agreement.

There is evidence that the landlord met with the tenant September 11, 2020 and presented him with a partially filled out repayment plan in the form (RTB 14) recommended by the Residential Tenancy Branch. The form did not show any installment payments under the repayment schedule, only the arrears. The landlord says the tenant did not agree to the repayment plan and so the ten day Notice was issued.

As I read the regulation, a tenant does not have to agree to a repayment plan. It is the landlord’s obligation (though a tenant may offer his or her own repayment plan under the Regulation) to present the tenant with a plan in compliance with the Regulation.

Only in the event the tenant fails to pay a required installment under the plan, the landlord may issue a ten day Notice.

The first installment under an imposed plan must be paid on the same date that rent is due under the tenancy agreement and the date that first instalment must be paid must be at least 30 days after the date the repayment plan is given by the landlord to the tenant (s. 4(1) of the Regulation).

In this case, had the landlord imposed a plan on September 11, 2020, the first installment could not have come due until November 1, 2020.

When this ten day Notice was issued on September 11, the landlord had not created a complete repayment plan and, in any event, the tenant had not violated it by failing to pay any installment.

### Conclusion

The tenant's application is allowed. The ten day Notice to End Tenancy dated September 11, 2020 is cancelled.

There is no claim for recovery of any filing fee.

A summary of this decision was rendered orally at hearing and 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: November 19, 2020

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Residential Tenancy Branch