



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC  
OPRM-DR, OPR-DR, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or the tenancy agreement. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The landlord's application was made by way of the Direct Request process, which was referred to this participatory hearing, joined to be heard with the tenant's application.

The landlord and the tenant attended the hearing, and each gave affirmed testimony. The landlord was also represented by Legal Counsel, and called 1 witness who gave affirmed testimony. The tenant was assisted by an Advocate. The parties, or their representatives, were given the opportunity to question each other and the witness, and to give submissions.

During the course of the hearing, the tenant advised that the second tenant named in the landlord's application is a child. Therefore, I dismiss the landlord's application with respect to that tenant.

No issues with respect to service or delivery of evidence were raised.

### Issues to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was given in accordance with the *Residential Tenancy Act*, or should it be cancelled?

- Has the tenant established that rent was paid in full within the time required under the *Act* after service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, specifically with respect to COVID-19 regulations?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on May 1, 2016 and reverted to a month-to-month tenancy after April 30, 2017, and the tenant still resides in the rental unit. Rent in the amount of \$1,450.00 was payable on the 1<sup>st</sup> day of each month, which was increased to \$1,508.00 during the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$725.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite in a 4-plex, and a copy of the tenancy agreement, as well as a Notice of Rent Increase have been provided as evidence for this hearing.

The landlord further testified that on September 4, 2020 the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by taping it to the door of the rental unit, and a copy has been provided for this hearing. It is dated September 4, 2020 but contains no effective date of vacancy. The reason for issuing it states that the tenant failed to pay rent in the amount of \$8,140.00 that was due on September 1, 2020. The tenant did not want to go to the door to receive it when the landlord arrived with his son and another friend. The tenant had her child go back and forth, and finally the landlord posted it to the door and sent a copy by registered mail the same day.

The landlord has also provided a Proof of Service document which states that the landlord served the Notice on September 4, 2020 by hand delivering a copy to the tenant and attaching a copy on the door or other conspicuous place. It is also signed by a witness which states that the witness observed the landlord serve the Notice on September 4, 2020 by leaving a copy with the tenant.

The tenant paid rent for September, 2020 on September 14, 2020, and the landlord provided a Payment Plan to the tenant which is dated October 1, 2020 and commences the payment plan on December 1, 2020. Also provided is a Canada Post cash register receipt dated October 8, 2020. The landlord testified that it was sent to the tenant on the chance that the landlord may not be successful in obtaining an Order of Possession.

**The landlord's witness** is the landlord's son, who testified that he was sitting by the car, and watched his dad and another person knock on the tenant's door. The tenant's daughter came out, went in, and came out again saying that the tenant was not feeling well. That was repeated about 4 times, and the landlord was asked to leave it in the mailbox. The witness testified that they believed it had to be served personally. Then they went to the post office and sent it by registered mail.

**The tenant** testified that the Notice was received on September 14, 2020 by registered mail, and the rent for September was paid that day. The tenant does not recall the landlord attending at the rental unit, and stated that perhaps she wasn't home.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, and service of it is crucial.

I have reviewed the Notice, and I find that it is an older version of the approved form. However, I also find that it contains information required under the *Act*, except there is no effective date of vacancy. The law states that incorrect effective dates are changed to the nearest date that complies with the *Act*. I'm not convinced that no effective date of vacancy can be construed to be an incorrect effective date.

The landlord testified that he taped the Notice to the door of the rental unit. The landlord's witness did not provide any such testimony but testified that the tenant did not go to the door. The Proof of Service document provided by the landlord states that it was served by personally handing it to the tenant and posting a copy to the door of the rental unit. The statement also shows that the witness observed the landlord serve it by personally handing it to the tenant, which is contrary to the testimony of the landlord and his son.

The parties agree that the landlord served a copy as well by registered mail, and the landlord and the landlord's witness both testified that it was sent on September 4, 2020. Documents served in that manner are deemed to have been received 5 days later, which in this case would be September 9, 2020. The tenant has 5 days to pay the rent or dispute the Notice, and the landlord testified that the rent for September, 2020 was paid on September 14, 2020, which is the 5<sup>th</sup> day. Therefore, I find that the tenant has complied with the law, and I cancel the Notice.

The landlord did not provide any testimony of what the arrears of rent are, but has provided a copy of a Payment Plan, which is required for "affected rent" during the COVID-19 period. The landlord has also provided evidence of sending the Payment Plan to the

tenant by registered mail on October 8, 2020. I order the tenant to comply with the Payment Plan, which commences on December 1, 2020.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 4, 2020 is hereby cancelled, and the tenancy continues.

I hereby order the tenant to comply with the Payment Plan provided to the tenant by the landlord, which commences on December 1, 2020.

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: November 16, 2020

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Residential Tenancy Branch