



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

On September 24, 2020, the Tenant made an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 16, 2020. On October 23, 2020, the Tenant filed another Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 16, 2020.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by the Tenant. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the tenancy ending due to unpaid rent?
- Is the Landlord entitled to an order of possession for the rental unit?

### Background and Evidence

The parties testified that the tenancy began on October 15, 2018 on a month to month basis. Rent in the amount of \$2,025.00 is due to be paid to the Landlord by the fifteenth day of the month. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant has failed to pay the rent due under the tenancy agreement and also failed to pay rent due under a rent repayment plan.

The Landlord testified that the Tenant was served with two notices to end tenancy as follows:

- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 16, 2020
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 16, 2020

The September 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$2,025.00 which was due on September 15, 2020. The Notice also indicates that Tenant failed to pay rent from the period of July 2019 to December 2019.

The October 10 Day Notice indicates that the Tenant has failed to pay \$1,125.00 in accordance with a repayment plan.

The 10 Day Notices informed the Tenant that the Notices would be cancelled if the rent was paid within five days. The Notices also explains the Tenant had five days to dispute the Notices.

The Landlord testified that the Tenant did not pay the rent due under the tenancy agreement, or repayment plan within 5 days of receiving the 10 Day Notices.

The Landlord provided copies of the 10 Day notices and a copy of a repayment plan issued September 1, 2020 to begin on October 15, 2020 with nine rent repayments of \$1,125.00 due on the 15<sup>th</sup> day of each month.

The Landlord is seeking to enforce the 10 Day Notices and wants an order of possession for the rental unit.

The Tenant disputed both 10 Day Notices within the required time period. In response to the Landlord's testimony, the Tenant provided affirmed testimony that he did not pay the Landlord the rent owing under the tenancy agreement and repayment plan.

The Tenant was asked if there was reason why the rent has not been paid, and he did not elaborate other than stating he has not paid the rent. In the Tenants application he writes “financial hardship due to covid 19.”

### Analysis

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Based on the evidence before me, the testimony of the Landlord and Tenant, I find that the Tenant failed to pay the rent that was due under their tenancy agreement within five days of receiving the 10 Day Notices.

I find that the Tenant did not have a legal right under the *Act* to withhold payment of the rent. I find that the Tenant has breached the Act and fundamentally breached the tenancy agreement. The tenancy is ending.

I dismiss the Tenant's application to cancel the 10 Day Notices dated September 16, 2020 and October 16, 2020.

Under section 55 of the Act, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice dated October 16, 2020 complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective two (2) days, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Tenant failed to pay the rent due under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 16, 2020 and did not have a legal right to withhold payment of the rent.

The Landlord is granted an order of possession for the rental unit effective two (2) days after service on the Tenant.

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 17, 2020

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Residential Tenancy Branch