



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STRATHMORE LODGE LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

On October 8, 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 October 5, 2020 ("the 10 Day Notice").

This matter was set for hearing by telephone conference call at 11:00 am on this date. The Landlord and Tenant attended the hearing and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at 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.

### Issue to be Decided

- *Is the tenancy ending due to a fundamental breach of the tenancy agreement regarding payment of rent?*

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on November 1, 2019 as a one-year fixed term tenancy. Rent in the amount of \$1,200.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$600.00.

The Landlord testified that the Tenant failed to pay all the October 2020 rent when it was due under the tenancy agreement. The Landlord testified that the Tenant only paid \$900.00 of the \$1,200.00 owing.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 5, 2020. The Landlord testified that the Tenant was served with the 10 Day Notice on October 5, 2020.

The 10 Day Notice provides that the Tenant has failed to pay rent in the amount of \$300.00 which was due on October 1, 2020. The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant did not pay the rent owing within 5 days of receiving the 10 Day Notice.

The Landlord testified that the Tenant also failed to pay all the rent owing for November 2020 and has not paid any rent for December 2020.

The Landlord is seeking to end the tenancy and receive an order of possession for the rental unit.

The Tenant disputed the Notice on October 8, 2020 within the required time period.

In response, the Tenant provided testimony confirming that he did not pay the full amount of rent owing under the tenancy agreement for October 2020. He testified that he still owes the Landlord \$300.00. The Tenant also acknowledged that he has not paid the Landlord all the rent owing for November 2020 and has not paid December 2020 rent.

### 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 on a balance of probabilities, I find that the Tenant failed to pay the rent due under the tenancy agreement within five days of receiving the 10 Day Notice.

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 Notice dated October 5, 2020.

Under section 55 of the Act, when a tenant's 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 complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) 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 and did not have a legal right to withhold payment of the rent.

The Landlord is granted an order of possession effective two 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: December 18, 2020

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Residential Tenancy Branch