



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, a co-owner of the property (J.C.), and an agent for the Landlord A.Y. (the Agent), all of whom provided affirmed testimony. Neither the Tenant nor an agent acting on their behalf attended. The Agent stated that the Landlord was properly served with the Application and the Notice of Hearing by the Tenant and I confirmed that the hearing information contained in the Notice of Hearing was correct. As the Agent, the Landlord and the co-owner all attended the hearing on time and ready to proceed based on the hearing information contained in the Notice of Hearing served on them by the Tenant and there was no evidence before me that the parties had agreed to reschedule the matter, the hearing therefore proceeded as scheduled despite the Tenant's absence pursuant to rule 7.3 of the Rules of Procedure.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all documentary evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address confirmed in the hearing.

### Preliminary Matters

At the outset of the hearing I identified that I had not received any documentary evidence from the Landlord and the Agent stated that they had submitted 35 pages of documentary evidence to the Residential Tenancy Branch (the Branch) by fax on December 21, 2020, for which they had received a delivery confirmation.

I confirmed the fax number used by the Agent to send the documents to the Branch, and this number matched the publicly available fax number for the Branch to be used for the purpose of evidence submission. As the documentary evidence was not before me and there was no record on the file that the documents had been received or processed, I apologized to the Landlord, the Agent, and the co-owner, for their absence.

As the Agent stated that the majority of the documents contained in the 35 page fax submission related to the Landlord's claim for recovery of unpaid rent, and no Application was before me from the Landlord for consideration with regards to unpaid rent, the hearing continued as scheduled despite my inability to view the above noted documentary evidence. I advised the Agent that they, the Landlord, and the co-owner could provide affirmed testimony for my consideration during the hearing with regards to service of the 10 Day Notice, the contents of the 10 Day Notice, and the payment of rent, or lack thereof, and requested that the Agent re-submit a copy of the 10 Day Notice for my consideration as soon as possible. The Agent was able to submit a copy of the 10 Day Notice electronically for my consideration prior to the end of the hearing, and as a result, I have accepted it for consideration in this matter.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice, and if not, is the Landlord entitled to an Order of Possession for the rental unit pursuant to section 55 of the Act?

Is the Tenant entitled to recovery of the \$100.00 filing fee?

### Background and Evidence

The Agent stated that one year fixed term of the tenancy commenced on August 15, 2019, and ended on August 15, 2020, after which time the tenancy continued on a month to month (periodic) basis. The Agent stated that rent in the amount of \$1,475.00 is due on the first day of each month and that a security deposit in the amount of \$737.50 was paid, which is still held in trust by the Landlord.

The Agent stated that as of October 15, 2020, the Tenant owed \$3,127.07 in unpaid rent, which includes one month of affected rent for which a repayment plan was entered into with the Tenant as required. The Agent stated that the Tenant failed to make the required repayments and failed to pay rent due on September 15, 2020. As a result, they stated that a 10 Day Notice was posted to the door of the rental unit on October 5, 2020. In their Application the Tenant confirmed that the 10 Day Notice was posted to their door on this date and I note that they filed their Application seeking cancellation of the 10 Day Notice four days later on October 9, 2020.

The Agent stated that the 10 Day Notice was signed and dated October 5, 2020, has an effective date of October 15, 2020, and that the approved form was used. The Agent stated that the 10 Day Notice states that \$3,127.07 in rent was due as of September 15, 2020, and that no rent has been paid since. The Agent stated that as a result, the Tenant now owes \$5,892.00 in outstanding rent.

At my request a copy of the 10 Day Notice was re-submitted for my review and consideration by the Agent during the hearing as the Tenant did not submit a copy as part of their Application seeking its cancellation and the documentary evidence submitted by the Agent by fax to the Branch on December 21, 2020, has not yet been processed. The 10 Day Notice submitted by the Agent matches the information provided by the Agent during the hearing as set out above, however, the street address to be vacated is different than the address listed as the address for the rental unit in the Application as one of the numbers in the four number street address is different.

The Agent stated that this was a clerical error in the recording of the street number, but argued that the Tenant clearly knew it related to them and their rental unit as they filed an Application seeking cancellation of the 10 Day Notice with the Branch.

No one appeared at the hearing on behalf of the Tenant to provide any documentary evidence or testimony for my consideration.

### Analysis

Based on the affirmed testimony of the Agent at the hearing and the Application filed by the Tenant seeking cancellation of the 10 Day Notice, I accept as fact that the 10 Day Notice was posted to the door of the rental unit on October 5, 2020, and received by the Tenant that same date. I also accept as fact that the terms of the tenancy are as set out by the Agent during the hearing.

Based on the uncontested and affirmed testimony of the Agent at the hearing and the 10 Day Notice in the documentary evidence before me, I am satisfied that the Tenant owed at least one month of unaffected rent in the amount of \$1,475.00 at the time the 10 Day Notice was served and that the Tenant has not paid any amount of rent since the 10 Day Notice was served. As a result, I am satisfied on a balance of probabilities that the Landlord and/or the Agent have grounds to end the tenancy pursuant to section 46 of the Act and I therefore dismiss the Tenant's Application seeking cancellation of the 10 Day Notice without leave to reapply. As the Tenant's Application seeking cancellation of the 10 Day notice is dismissed, I also dismiss their request for recovery of the \$100.00 filing fee without leave to reapply.

Having dismissed the Tenant's Application seeking cancellation of the 10 Day Notice, I will now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. Section 55 of the Act states that when a tenant submits an Application 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 is compliant with section 52 of the Act.

Although the 10 Day Notice submitted by the Agent is in writing on the approved form, is signed and dated by the Agent, and contains an effective date and the grounds upon which the 10 Day Notice was issued, I note that one of the numbers in the street address for the rental unit is incorrect. During the hearing the Agent provided affirmed testimony that this was a clerical error. As there is no documentary or other evidence before me to the contrary, I accept as fact that there was a clerical error in the recording of the rental unit address on the 10 Day Notice.

Section 52(b) of the Act requires that a notice to end tenancy include the address of the rental unit in order to be effective. As there was a clerical error in the recording of the rental unit address on the 10 Day Notice, I therefore find that it does not comply with section 52 of the Act as written. However, section 68(1) of the Act states that if a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, I may amend the notice so that it complies with section 52 if satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice.

As the Tenant disputed the 10 Day Notice, I am satisfied that they knew that the correct address for the rental unit had been omitted and that a clerical error had occurred in the