



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RR, CNR, RP, OLC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 07, 2020 (the “Application”). The Tenant applied as follows:

- To reduce rent for repairs, services or facilities agreed upon but not provided;
- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”);
- For an order that repairs be made to the unit or property; and
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

The Tenant did not appear at the hearing. The Landlord did appear at the hearing. The Landlord confirmed the Tenant is still living at the rental unit. The Landlord sought an Order of Possession based on the Notice.

I waited 10 minutes at the outset of the hearing to allow the Tenant to participate in this hearing scheduled for 11:00 a.m. The Tenant did not call into the hearing. I proceeded with the hearing in the absence of the Tenant. The hearing proceeded for 37 minutes.

Neither party submitted evidence prior to the hearing. The Landlord confirmed receipt of the hearing package.

I told the Landlord I could not consider the Notice without having a copy of it and that the Landlord could upload it to the RTB website during the hearing. I told the Landlord I would give the Landlord 10 minutes to do this at which point I would dismiss the Application and the Landlord would need to file their own Application for Dispute Resolution if the Landlord wanted an Order of Possession based on the Notice. I

proceeded in this manner for the following reasons. The Landlord was aware of the hearing as the Landlord received the hearing package. Pursuant to rule 6.6 of the Rules of Procedure (the "Rules"), the Landlord has the onus to prove the Notice, even on the Tenant's Application to dispute the Notice. Parties are expected to know the Rules which govern these proceedings. The Landlord should have submitted a copy of the Notice prior to the hearing. I was not required to allow the Landlord a further opportunity to submit the Notice during the hearing. However, I chose to allow the Landlord a further opportunity to submit the Notice during the hearing and placed a time limit on this because it should have been done prior to the hearing and there is not time in these hearings to allow parties more than a brief opportunity to upload further evidence. The Landlord asked for 30 minutes which I did not find reasonable during a one-hour hearing, a portion of which had already been used discussing this issue. I reiterated the time limit of 10 minutes. The Landlord uploaded pages one and two of the Notice and I considered these.

#### Issue to be Decided

1. Should the Landlord be issued an Order of Possession based on the Notice?

#### Background and Evidence

The Landlord testified as follows.

There is a verbal tenancy agreement between the Landlord and Tenant. The tenancy started September 20, 2018 and is a month-to-month tenancy. Rent is \$2,000.00 per month due on the first day of each month. The Tenant paid a security deposit of \$1,000.00.

The Notice was given to the Tenant in person November 04, 2020. All three pages of the Notice were given to the Tenant. The boxes under "I, the Landlord, give you 10 days' notice to move out of the rental unit/site located at:" were completed on the copy of the Notice given to the Tenant. The landlord named on the Notice is the Landlord's brother-in-law. Both the Landlord and Landlord's brother-in-law own the rental unit. The Tenant is aware that the Landlord's brother-in-law is also a landlord.

The Tenant has not paid any rent since August which is reflected on the Notice. The amount on the Notice also reflects the security deposit amount. The Tenant has not made any payments since being issued the Notice. The Tenant did not have authority under the Act to withhold rent.

I note the following about the Notice. It does not include the Tenant's full first name and the Tenant's last name is spelled wrong. It includes the rental unit address under "Tenant Address:" but not under "I, the Landlord, give you 10 days' notice to move out of the rental unit/site located at:" The landlord's name on the Notice is different than the Landlord's name. The Notice is signed and dated November 04, 2020 by the Landlord. The Notice has an effective date of November 14, 2020. The Notice states that the Tenant failed to pay \$7,500.00 due on November 01, 2020.

### Analysis

Rule 7.3 of the Rules states:

#### 7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Here, the Tenant failed to attend the hearing and provide evidence regarding the Application. In the absence of evidence from the Tenant regarding the basis for the Application, the Application is dismissed without leave to re-apply. Given this, the dispute of the Notice is dismissed without leave to re-apply.

Section 55 of the Residential Tenancy Act (the "Act") requires an arbitrator to issue an Order of Possession if a tenant applies to dispute a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

I am satisfied based on the undisputed testimony of the Landlord that the Tenant has not paid any rent since August and therefore \$8,000.00 in rent was outstanding when the Notice was issued.

August rent is "affected rent" pursuant to the Covid-19 (Residential Tenancy Act And Manufactured Home Park Tenancy Act) (No. 3) Regulation. The Landlord was required to give the Tenant a repayment plan for August rent. There is no evidence before me that the Landlord did so. Therefore, I have not considered August rent when considering the Notice.

I am satisfied based on the undisputed testimony of the Landlord that the Tenant failed to pay rent for September, October and November and therefore \$6,000.00 was outstanding when the Notice was issued.

I am satisfied based on the undisputed testimony of the Landlord that the Tenant did not have authority under the Act to withhold rent for September to November.

Given the Tenant did not pay rent as required, the Landlord was entitled to issue the Notice pursuant to section 46(1) of the Act.

I am satisfied based on the undisputed testimony of the Landlord that the Notice was given to the Tenant in person November 04, 2020. The Notice was served in accordance with section 88(a) of the Act.

The Tenant had five days from November 04, 2020 to pay the outstanding amount of \$6,000.00 from September to November or to dispute the Notice pursuant to section 46(4) of the Act. I am satisfied based on the undisputed testimony of the Landlord that the Tenant did not pay the outstanding rent. The Tenant disputed the Notice; however, the Tenant failed to attend the hearing and the dispute has been dismissed.

Section 52 of the Act outlines the form and content required for a notice to end tenancy issued under the Act. I note that there are issues with the Notice including the spelling of the Tenant's name and the amount of rent outstanding, which should state \$6,000.00. However, I do not find that these issues invalidate the Notice. Further, I am satisfied based on the undisputed testimony of the Landlord that the rental unit address was included in the correct boxes on the Notice given to the Tenant. In the circumstances, I am satisfied the Notice given to the Tenant complied with section 52 of the Act as required by section 46(2) of the Act.

I have dismissed the Application including the dispute of the Notice and found that the Notice complies with section 52 of the Act. Further, I am satisfied the Landlord had grounds to issue the Notice and uphold the Notice. Therefore, pursuant to section 55 of the Act, the Landlord is issued an Order of Possession for the rental unit.

I issue the Landlord an Order of Possession effective two days after service on the Tenant as the effective date of the Notice has passed and I accept the undisputed testimony of the Landlord that there is still outstanding rent.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord is issued an Order of Possession pursuant to section 55 of the *Act*. The Order is effective two days after service on the Tenant. The Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 12, 2021

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Residential Tenancy Branch