



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, LRE

### Introduction

On December 12, 2020, the Tenants 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 December 12, 2020.

The matter was set for a conference call hearing. The Tenant and Landlords attended the teleconference hearing. The Landlords were assisted by their agent.

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 each party. 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

- Was the rent due under the tenancy agreement paid within 5 days of the Tenants receiving the 10 Day Notice?
- Is the tenancy ending and is the Landlord entitled to an order of possession?

### Background and Evidence

At the outset of the hearing the Tenant interrupted my explanation of the hearing process and stated that the Respondents are not Landlords under the Act. The Tenant

stated that the respondents may not be the homeowner and therefore this may be a roommate situation. The Tenant provided testimony that he rents a converted garage and does not share a kitchen or bathroom with the Respondents.

In reply, the Respondents testified that they are the homeowners, they have a mortgage on the property, and are on title as owners of the residential property. The Respondents testified that they rented the Tenants a converted garage and they do not share a kitchen or bathroom with the Tenants.

The Landlord and Tenant testified that the tenancy arrangement began in October 2018. Another Tenant, Ms. J.W. was added to a written tenancy agreement on April 1, 2019. The tenancy agreement provides that rent in the amount of \$950.00 is due to be paid to the Landlord by the first day of each month. The Landlord and Tenant each provided a copy of the tenancy agreement.

Based on the testimony and evidence before me, I find that the Respondents are the owners of the residential property and permitted occupation of a rental unit under a tenancy agreement. With consideration to section 4 (c) of the Act, I find that the Act applies to this dispute. I find that the Respondents meet the definition of Landlord under the Act.

The Landlord testified that around April 1, 2019 the Tenants were not able to pay the full amount of rent owing under the tenancy agreement, so the Landlord agreed to lower the monthly rent to \$800.00 each month.

The Landlord testified that the rent was paid each month by Ms. J.W. in cash and a receipt was issued to her. The Landlord testified that they have not received any payments of rent since November 2020.

The Landlord testified that the Tenants have failed to pay the rent owing under the tenancy agreement. The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 12, 2020 ("the 10 Day Notice") in the amount of \$800.00. The 10 Day Notice was posted to the Tenants door on December 12, 2020.

The Landlord testified that the unpaid rent owing under the tenancy agreement for December 2020 was not paid within 5 days of the Tenants receiving the 10 Day Notice and the Landlord has not received any rent for December 2020, January, February, and March 2021.

The Landlord testified that the Tenant Ms. J.W. moved out of the rental unit on November 7<sup>th</sup> or 8<sup>th</sup>. The Tenant Mr. K.V remains living in the rental unit.

The Landlord provided rent receipts showing that the last rent payment received was for November 2020 in the amount of \$800.00. The Landlord testified that the Tenant Mr. K.V. was never the Tenant who made payment of rent.

The Tenant disputed the 10 Day Notice within the required time period.

In reply, the Tenant began arguing the definition of Landlord and argued that this is not a proper tenancy. When the Tenant was asked to respond to the Landlords' testimony regarding payment of rent, he stated that the rent has not been paid since November because it is not safe to live there due the electrical service being only 110 amps. The Tenant was asked where in the Act it states he can withhold payment of rent for the reason he provided. The Tenant did not refer to a section of the Act.

Mr. K.V. testified that Ms. J.W. went to the hospital in November 2020 and was released in December 2020 and is now living elsewhere with Mr. K.V.'s sister.

The Tenant provided testimony confirming that the rent owing for December, January, February, and March has not been paid. The Tenant then stated I can pay it.

The Tenant again tried to engage me in a conversation on my interpretation of Landlord and was informed that this Decision would address his question.

The Tenant became argumentative and stated that if the hearing does not go his way, he will file for Judicial Review at Supreme Court.

The Tenant was informed that section 26 of the Act requires him to pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

At this point I was ending the hearing and receiving instruction from the parties on where to send this decision, when the Tenant started yelling "I paid my rent".

The hearing was ended.

### 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 Landlords and Tenant, and on a balance of probabilities, I find that the Tenants failed to pay the rent due under the tenancy agreement for the month of December 2020 within five days of receiving the 10 Day Notice.

I find that the Tenants did not have a legal right under the Act to withhold payment of the rent. Unilaterally withholding payment of rent due to a safety concern with the rental unit is not a legal reason to withhold payment of rent. The Tenant could have applied for dispute resolution for a repair order.

The Tenant testified the rent was not paid for the four-month period but stated he could pay it.

It appears to me that at the end of the hearing when the Tenant determined his application was not going his way, he attempted to change his testimony by stating the rent was paid. He then tried to influence my decision by stating he will file for judicial review. I do not find the Tenant's testimony that the December rent was paid to be credible. It appears to me that throughout the hearing the Tenant was intentionally trying to find ways to have the Landlords' 10 Day Notice dismissed. I note that the Tenant provided no documentary evidence to prove the rent had been paid.

I find that the Tenant has breached the Act and fundamentally breached the tenancy agreement by failing to pay the rent due under the tenancy agreement. The tenancy is ending.

I dismiss the Tenants' application to cancel the 10 Day Notice dated December 12, 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 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 Tenants 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 Tenancy is ending.

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

The Landlord has an upcoming hearing scheduled for a monetary order to recover unpaid rent from the Tenants.

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: March 09, 2021

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Residential Tenancy Branch