



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RP, EE, MNDCT, FFT  
OPRM-DR, OPR-DR, FFL

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s application for Dispute Resolution was made on February 10, 2021. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent issued on February 5, 2021, to request an order that the Landlord repairs the unit, site or property, to request a rent reduction for repairs, services or facilities agreed upon but not provided, to request a monetary order compensation for my monetary loss or other money owed, and to recover their filing fee.

The Landlord’s Direct Request Application was made on March 30, 2021. As the Tenant had already filed a dispute of the Notice, the Landlord’s application was crossed with the Tenant’s applications to be heard at the same time. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent issued on December 31, 2020, for a monetary order for unpaid rent and to recover their filing fee.

The Landlord, the Landlord’s Daughter, the Landlord’s Spouse (the “Landlord”) and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with 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.

### Preliminary Matters - Related Issues

I have reviewed the Tenant's application, and I note that they have applied to cancel a Notice to end tenancy as well as several other issues. I find that these other issues are not related to the Tenant's request to cancel the Notice. As these other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenant's claims for an order that the Landlord repairs the unit, site or property, to request a rent reduction for repairs, services or facilities agreed upon but not provided, and to request a monetary order compensation for my monetary loss or other money owed.

I will proceed with this hearing on the Tenant's claim to cancel the Notice and recover the filing fee.

### Preliminary Matter - Unprepared Party

Throughout the hearing, the Landlord was unprepared to present their documentary evidence or offer clear verbal testimony regarding the details of their claim. When asked to testify to the details of the history of rent payment amounts and dates, the Landlord offered an inconsistent broken account of the payment history and was unable to testify to the rent amount due as indicated on the Notices before me.

The Landlord was provided with ample time during these proceedings to search through paperwork and confirm information. However, the Landlord remained unable to clearly testify to or present documentation in support of the Landlord's application for an order of possession and a monetary order.

### Preliminary Matters – Notice Withdrawn

During this hearing, the Landlord withdrew the Notice to End Tenancy issued on December 31, 2020.

The Tenant confirmed that they were agreeable to the Landlord withdrawing this Notice to end the tenancy.

I find that the 10-Day Notice to end tenancy issued on December 31, 2020, has been withdrawn.

### Issues to be Decided

- Should the 10-Day Notice issued on February 5, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to the return for their filing fee for this application?
- Is the Tenant entitled to the return for their filing fee for this application?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on March 6, 2015, as a two-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. The initial monthly rent amount of, \$3,100.00, was increased to \$3,201.12 through two rent increases, the first issued on October 29, 2017 for a increase of \$120.00, and the second was issued on October 24, 2019 for a increase of \$81.012, both parties agreed that the rent is to be paid by the first day of each month. The tenancy agreement also recorded that the Landlord collected a security deposit of \$1,550.00 and pet damage deposit of 900.00 and at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement and the rent increases notices into documentary evidence.

The parties agreed that the Landlord served the 10-Day Notice on February 5, 2021, by personal service to the Tenant. The 10-Day Notice did not list an effective date but recorded an outstanding rent amount of \$9,603.36. The Landlord, after prompting by this Arbitrator, and the provision of additional time to arrange their testimony, testified that at the time the Notice was issued the Tenant was past due on their rent payments for five months, for August 2020, September 2020, October 2020, November 2020 and February 2021, in the amount of \$16,005.60.

When questioned as to why the amount recorded on the notice did not reflect the full amount of rent due for those months, the Landlord testified, after additional prompting from this Arbitrator, that they must have made a mistake on the dollar amount written on the Notice. The Landlord testified that they had made an error on their Notice and had neglected to include the rent amount for November 2020 and February 2021.

When questioned as to why the dates of outstanding rent recorded on their monetary worksheet for these proceedings did not reflect the same dates that they were testifying to in this hearing, the Landlord was unable to provide an answer.

The Landlord then testified that the Tenant was also outstanding for the March, April, and May 2021 rent. After testifying to this the Landlord then changed their testimony, stating that these months, March, April, and May 2021 had been paid in full on May 11, 2021.

The Tenant testified that they agree they are outstanding in their rent for August 2020, but that the August rent is Covid effected rent and that they were waiting for the Landlord to serve them with the required rent repayment plan.

The Landlord agreed that they had not issued the covid effected rent repayment plan for the outstanding August 2020 rent as of the date of these proceedings.

The Tenant testified that they have paid all of the rent due on the Notice issued by the Landlord, three days ago, on May 11, 2021. The Tenant testified that they agreed that, that as of the date of this hearing, they are past due in the payment of their rent in amount of \$9,603.51, for the months of August 2020, January 2021, and the February 2021 rent but that they have not received a notice to end their tenancy for January 2021 or February 2021, and that the Landlord can not end their tenancy for the August 2020 rent as they have not been served with the required repayment pay for that Covid effected period.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

#### ***Landlord's notice: non-payment of rent***

**46** (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(4) *Within 5 days after receiving a notice under this section, the tenant may*  
*(a) pay the overdue rent, in which case the notice has no effect,*  
*or*  
*(b) dispute the notice by making an application for dispute resolution.*

(5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*  
*(b) must vacate the rental unit to which the notice relates by that date.*

I find that the Tenant received the 10-Day notice on February 5, 2021 and that pursuant to section 46 of the *Act* they had until February 10, 2021 to pay the indicated outstanding amount in rent.

I acknowledged that the Landlord's had included the rent for August in this Notice but had not issued the required repayment plan for that month before issuing this Notice. Accordingly, I will not consider the amount due for August 2020 in my determination of the validity of this Notice.

I accept the agreed-upon testimony of these parties that the Tenant was outstanding in their rent payment by at least \$9,603.36 on February 5, 2021 when the Landlord issued the 10-Day Notice to end tenancy that I have before me in these proceedings. I also accept the agreed-upon testimony of these that the Tenant paid this amount on May 11, 2021.

I find that the that the Tenant had not paid the outstanding rent as stated on the 10-Day Notice within the required five days. Therefore, I find that the Tenant is in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenant's application to cancel the 10-Day Notice.

Section 55 of the Act states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant failed in their dispute of that notice.

***Order of possession for the landlord***

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Pursuant to 52 of the Act, a landlord's notice must meet the following in form and content:

***Form and content of notice to end tenancy***

**52** *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice.*

- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.*

I have reviewed the 10-Day Notice to End Tenancy, and I find the 10-Day Notice is missing an effective date. As this Notice has no effective date, I find the Notice issued February 5, 2021, does not comply with section 52 of the *Act* and is therefore, of no effect, and that this tenancy continues until it is ended in accordance with the *Act*.

As for the Landlord requested for a monetary order for unpaid rent, I find that the Landlord was unprepared to speak to the particulars of their application regarding the payment history for this tenancy and the outstanding rent. Overall, I found the Landlord testimony regarding the details of their monetary claim to be unclear and unreliable. Due to this, I am unable to accurately determine what amounts or periods of rent remain outstanding for this tenancy.

However, as the both the Tenant and the Landlord did acknowledge that some rent remains outstanding for this tenancy, I find it appropriate to dismiss the Landlord's application for a monetary order for unpaid rent with leave to reapply.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for his application. I also find that the Tenant has not been successful in their application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for his application.

Conclusion

I dismiss the Tenant's application to cancel the 10-Day Notice issued February 5, 2021.

I dismiss the Landlord's application to enforce the 10-Day Notice issued February 5, 2021, as the notice does not meet the required form and content and is of no effect under the *Act*.

The Landlord application for a monetary order is dismissed with leave to reapply.

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: May 17, 2021

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Residential Tenancy Branch