



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, AS, OLC, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 04, 2021. The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 01, 2021 (the "Notice")
- To be allowed to assign or sublet the rental unit
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement in relation to subletting
- For reimbursement for the filing fee

The Tenant appeared at the hearing. The Landlord appeared at the hearing with his son, R.M., to assist. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

The Tenant said at the outset of the hearing that he was going to call a witness, R.S., at the hearing. The Tenant did not mention the witness again during the hearing. I asked the parties at the end of the hearing if there was anything further before we concluded. The Tenant did not mention the witness. I did not hear from the witness during the hearing.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset that I would consider the dispute of the Notice and dismiss the requests relating to subletting as they are not sufficiently related to the dispute of the Notice. The requests to be allowed to assign or sublet the rental unit and for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement in relation to subletting are dismissed with leave to

re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence. R.M. confirmed receipt of the hearing package and Tenant’s evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started October 01, 2017. Rent is \$3,000.00 per month due on the first day of each month. The Tenant testified that the written tenancy agreement is accurate. R.M. agreed that the details of the written tenancy agreement reviewed at the hearing are accurate.

The Notice states that the Tenant failed to pay \$3,000.00 in rent due January 31, 2021, February 28, 2021 and “5 months”.

R.M. testified that the Notice was put in the mailbox of the rental unit and posted to the door of the rental unit March 01, 2021. The Tenant acknowledged receiving the Notice around March 01, 2021 and agreed it was posted to the door of the rental unit.

R.M. and the Landlord testified that the Tenant had not paid any rent for five months when the Notice was issued.

The Tenant acknowledged he did not pay February rent. The Tenant mentioned that the Landlord said that if he moved out by February 15, 2021, he did not have to pay rent. The Tenant testified that the Landlord then changed this to the end of February.

R.M. testified that the parties had a verbal agreement that the Tenant did not have to pay rent for two months if he moved out of the rental unit at the end of February; however, the Tenant did not move out at the end of February and did not pay rent so was issued the Notice.

The parties agreed the Tenant has not paid any rent since being issued the Notice.

I read out the six reasons tenants can withhold rent and asked the Tenant if any of these six reasons applied to February rent. The Tenant mentioned that the Landlord wanted him out February 15<sup>th</sup> or 28<sup>th</sup>. The Tenant said the Landlord kicked the subtenants out and therefore did not follow through with their agreement and contributed to his inability to pay rent.

### Analysis

Section 26(1) of the *Act* states:

26 (1) A tenant must pay 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.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

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...

(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...

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenants withholding rent.

I am satisfied based on the testimony of the parties that the Tenant is required to pay \$3,000.00 in rent per month by the first day of each month pursuant to the tenancy agreement.

I am satisfied based on the testimony of the parties that the Tenant did not pay rent for February of 2021.

I am satisfied based on the testimony of the parties that there was a verbal agreement between them that the Tenant did not have to pay rent for two months, including February, if the Tenant moved out of the rental unit by February 28, 2021. I am also satisfied based on the testimony of the parties that the Tenant did not move out of the rental unit by February 28, 2021. Therefore, I am satisfied the Tenant was not entitled to withhold February rent based on the verbal agreement between the parties, which the Tenant did not comply with.

The Tenant did not point to any other valid reason for withholding February rent. The Tenant mentioned the Landlord not complying with their agreement about subtenants; however, this did not entitle the Tenant to withhold rent.

I am satisfied the Tenant did not have authority under the *Act* to withhold rent and therefore section 46(3) of the *Act* does not apply. Further, the Tenant was required to pay February rent pursuant to section 26(1) of the *Act*.

Given the Tenant did not pay February rent and did not move out February 28, 2021 in accordance with the agreement between the parties, I am satisfied the Landlord was entitled to serve the Tenant with the Notice on March 01, 2021 pursuant to section 46(1) of the *Act*.

I am satisfied based on the testimony of the parties that the Notice was served on the Tenant in accordance with section 88(g) of the *Act*. I am satisfied based on the testimony of the Tenant that he received the Notice around March 01, 2021.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*. I acknowledge that the due date of the rent noted on the Notice is somewhat unclear. However, I am satisfied the Tenant was aware he did not pay February rent. I am also satisfied the Tenant was aware of the agreement between the parties that rent for February was free if he moved out February 28, 2021. I am also satisfied the Tenant was aware he did not move out of the rental unit February 28, 2021. Therefore, I am satisfied the Tenant knew, or ought to have known, that the Notice related to February rent. Further, the Notice does indicate that rent was due February 28, 2021, which again accords with the agreement between the parties.

The Tenant had five days from receipt of the Notice to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

I am satisfied based on the testimony of the parties that the Tenant did not pay any rent after the Notice was issued and therefore did not pay the outstanding rent within five days of receiving the Notice.

The Tenant disputed the Notice March 04, 2021, within time. However, the Tenant has agreed he did not pay February rent, agreed he did not move out February 28, 2021 as per the agreement of the parties and has not pointed to any authority under the *Act* to withhold February rent. Therefore, the Tenant has not provided a valid basis to dispute the Notice and the dispute is dismissed without leave to re-apply.

Section 55(1) of the *Act* states:

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...and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have found the Notice complies with section 52 of the *Act*. I have also dismissed the Tenant's dispute of the Notice. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

As the Tenant was not successful in the Application, he is not entitled to reimbursement for the filing fee.

### Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court 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: June 14, 2021

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Residential Tenancy Branch