



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

On June 28, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession for the rental unit based on issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord is also seeking a monetary order for unpaid rent.

The matter was set for a conference call hearing. The Tenant and the Landlord’s legal counsel attended the hearing. The Landlord was not present.

The hearing process was explained. 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.

The parties confirmed that they have exchanged the documentary evidence that I have before me. 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. The parties were informed that recording the hearing is not permitted.

### Issues to be Decided

- Is the Landlord entitled to an order of possession based on an undisputed 10 Day Notice?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Tenant and Landlords counsel agreed that the tenancy began on September 10, 2019 and is currently on a month to month basis. Rent in the amount of \$670.00 is to be paid to the Landlord by the first day of each month. The Landlord provided a copy of the tenancy agreement.

The rental property was sold to a new owner in May 2021 and the rights and responsibilities under the tenancy agreement continue with the new owner.

The Landlord's counsel testified that the Tenant did not pay the rent owing under the tenancy agreement and that the previous Landlord served the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 14, 2020. The Landlord provided a copy of the 10 Day Notice.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$5,380.00 which was due on November 1, 2020. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant testified that she received the 10 Day Notice in November 2020 and did not dispute it because the Landlord told her if she paid the rent everything would be fine, and that the Landlord also served her with a repayment plan. A copy of an undated and unsigned repayment plan was provided by the Landlord.

The Tenant provided testimony that she believes she owes about \$3,000.00 in unpaid rent. The Tenant stated that she should not have to pay any amount because of improvements she made to the rental unit.

The Landlord's counsel was asked why the Landlord waited five months to take action to enforce the 10 Day Notice. Counsel replied that the Landlord was aware that the Tenant was ill and struggling to pay the rent, so they did not move forward with enforcement of the 10 Day Notice. Counsel stated that when the Tenant continued to miss more rent payments another 10 Day Notice was issued to the Tenant. The Landlord did not provide a copy of this 10 Day Notice.

The Tenant testified that she never received another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

### Analysis

Based on the testimony and evidence before me, I make the following findings:

The former or current Landlord was not present at the hearing to provide a response to the Tenant's evidence.

I find that the Tenant received a repayment plan from the Landlord. The repayment plan is not signed or dated by the Landlord. I accept that the Tenant received the repayment plan when she received the 10 Day Notice.

I find that the Landlords months long delay in enforcing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 14, 2020 renders it to be unenforceable. The Landlord allowed the tenancy to continue and allegedly issued a new 10 Day Notice many months later. The newer 10 Day Notice is not before me and did not form part of the Landlord's application.

I find that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 14, 2020 is not valid. The 10 Day Notice is cancelled.

The Landlord's application for an order of possession and monetary order is not successful and is dismissed in its entirety.

If the Landlord wants to pursue ending the tenancy, the Landlord must apply to enforce the other 10 Day Notice that was allegedly issued or serve the Tenant with a new 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

### Conclusion

The Landlords delay in enforcing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 14, 2020 makes it an ineffective and invalid Notice. The 10 Day Notice is cancelled.

The Landlord's application is not successful and is dismissed in its entirety.

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: June 28, 2021