



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      FFL, OPR-DR, MNR-DR, MNDCL, CNC, CNR, FFT

### **Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and utilities in the amount of \$6,430 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**10 Day Notice**”) pursuant to section 46;
- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the “**One Month Notice**”) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:37 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The tenant attended the hearing. She was assisted by an advocate (“**KC**”). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, KC, and I were the only ones who had called into this teleconference.

### **Preliminary Issue - Effect of Tenant’s Non-Attendance**

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

So, despite that one of these applications was filed by the tenant, the landlord bears the onus to prove the facts in both applications. However, pursuant to Rule of Procedure 7.4, a party (or their agent) must attend the hearing and present their evidence for it to be considered. As this did not occur, I have not considered any of the documentary evidence submitted by the tenant to the Residential Tenancy Branch in advance of the hearing.

### **Preliminary Issue – Service of Documents**

The landlord testified that she served the notice of dispute resolution proceeding forms and supporting evidence packages on the tenant by posting them on the door of the rental unit on three separate occasions: May 8, June 9, and July 14, 2021. She testified that the tenant never served her with any of his documentary evidence or the application for dispute resolution form for his application. However, she testified that she served him on May 8, 2021, he showed her his “application papers”, but did not serve them on her.

I find that all of the landlord’s documents were served in accordance with the Act and Rules of Procedure. I note that the documents served on July 14, 2021 were served outside of the 14-day window for applicants set out at Rule 3.14. However, they were served within the seven-day window for respondents set out at Rule 3.15 and, as the landlord is a respondent to the tenant’s application, I permit them into evidence on that basis.

I find that the tenant has failed to serve any of his documents on the landlord.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$6,430; and
- 3) recover the filing fee;

Is the tenant entitled to:

- 1) an order cancelling the 10 Day Notice and the One Month Notice (collectively, the “**Notices**”); and
- 2) recover the filing fee?

## **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting March 1, 2021 and ending April 30, 2021. Monthly rent is \$1,550 and is payable on the first of each month. The tenant provided a cheque for a security deposit of \$775 at the start of the tenancy, but the cheque bounced.

The landlord testified that the tenant provided cheques for March and April rent to her at the start of the tenancy, and that, along with the cheque for the security deposit, they bounced. She submitted a document from her bank titled "Returned Item Advice" dated March 4, 2021 which shows that the deposit cheque and the March rent cheque bounced due to insufficient funds.

The tenancy agreement stated that the "tenant will pay  $\frac{1}{4}$  of utility (water) bill from town of [redacted] every 6 months". The monthly rent also did not include electricity or, heat, or natural gas.

The landlord served the tenant with the 10 Day Notice in person on April 19, 2021. She submitted a witnessed proof of service form confirming this. The 10 Day Notice specified an effective date of April 30, 2021 and listed the arrears as \$1,550. She did not testify as to why this amount was less than the amount of arrears she claims to have been owed at this point (\$3,100, or March and April rent)

The landlord testified that the tenant did not pay any rent whatsoever until the first week of June 2021, when, over the course of multiple e-transfers, the tenant paid March, April, May, and June's rent. The landlord testified that she specifically asked the tenant not to e-transfer the rent, as her email address goes to her grandson (who deposited the funds in his account), but the tenant did not heed to this request. In any event, the landlord accepts that these e-transfers represent payment to her of outstanding rent. She testified that the tenant also e-transferred her July 2021 rent. She testified that he is not in rental arrears as of the date of the hearing.

The landlord testified that she accepted all rent paid after the Notice was served as for use and occupancy only. She testified that she is retired and of limited means and needed to money. She did not intend to re-instate the tenancy by accepting the money. She testified that she only ever intended to rent the rental unit to the tenant for only two months (as indicated by the tenancy agreement).

The landlord testified that the tenant has not paid any part of the municipal water bill and has not yet put the other utilities in his name. She testified that she is not exactly

sure how much he owes for these amounts, as she has yet to receive the bills. She estimated her loss at \$230.

The tenant served the tenant with the One Month Notice on March 31, 2021, it indicated an effective date of April 30, 2021. However, the One Month Notice form used was a 14-year-old version of the required RTB form, and the landlord did not indicate on the second page of the form what the grounds were for ending the tenancy. Instead, the landlord attached a letter stating that she intended to move into the rental unit on May 1, 2021.

## **Analysis**

### **1. Monetary Orders**

As the tenant has paid all of the rental arrears claimed, and as he has paid July 2021 rent, I find that he does not owe the landlord any amount for unpaid rent. Accordingly, I dismiss the landlord's claim for rental arrears without leave to reapply.

The landlord has not provided any documentary evidence to support her claim for compensation for unpaid utilities. Indeed, she testified that she is not yet sure how much she is owed, as she has yet to receive invoices from the various utilities suppliers. Accordingly, I find that she has failed to discharge her evidentiary burden that she has suffered a quantifiable loss as a result of the tenant's alleged breach of the tenancy agreement. I dismiss this portion of the landlord's application, with leave to reapply, as I find that this claim was made prematurely.

### **2. One Month Notice**

Section 52 of the Act states:

#### **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.

The One Month Notice used a form that is 14 years out of date. The current form substantively differs from the form the landlord served the tenant with. Additionally, the landlord did not complete the second page of the One Month Notice, indicating which of

reasons was the basis for ending the tenancy. Instead, she attached a letter which provided a reason for ending the tenancy which is not provided for on the form used. Accordingly, I find that the One Month Notice does not meet with the form and content requirements of sections 52(d) and (e) of the Act.

Accordingly, I order that the One Month Notice be canceled and of no force or effect.

### 3. 10 Day Notice

I accept the landlord's testimony, supported by the proof of service form, that she served the tenant with the 10 Day Notice personally on April 19, 2021. The tenant disputed the 10 Day Notice on April 21, 2021.

I accept the landlord's undisputed testimony that the tenant's March and April 2021 rent cheques bounced. I accept her testimony that the tenant did not pay March, April, or May 2021 rent until the first week of June 2021.

Accordingly, I find that, at the time the 10 Day Notice was issued, the tenant was in arrears. I do not find that the discrepancy between the amount of arrears listed on the 10 Day Notice and the amount the landlord testified to be owing causes the 10 Day Notice to become invalid. The amount listed on the 10 Day Notice is less than what the landlord testified was owing, accordingly, if the amount owing was in fact higher than what was written on the 10 Day Notice, the tenant was not prejudiced by the error, as he would have been able to pay a lower amount than what was owed to cancel the 10 Day Notice.

Section 46(4) of the Act states:

**Landlord's notice: non-payment of 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.

The tenant did not pay the amount specified on the 10 Day Notice within five days of being served with it, although he did dispute it within this period. However, based on the undisputed testimony of the landlord, I find that there was no valid reason to find that the 10 Day Notice should be cancelled. At the time it was issued, the tenant was in arrears and the 10 Day Notice complies with the form and content requirements of section 52.

The tenant cannot cause the 10 Day Notice to become invalid by paying the arrears at a point after the five-day window set out in section 46(4) of the Act. To do that would deprive section 46(4)(a) of the Act of any meaning.

Accordingly, I find that the 10 Day Notice was validly issued, and I dismiss the tenant's application to cancel it.

Section 55 of the Act states:

**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.

As stated above, the 10 Day Notice complies with section 52 of the Act. As such, I grant the landlord an order of possession effective two days after she serves it on the tenant.

4. Filing Fees

As I have found that the One Month Notice is invalid (thus justifying the tenant's application to cancel it) and as I have found that the 10 Day Notice is valid (justifying the landlord's application for an order of possession for non-payment of rent), I order that each party bear the cost of their respective filing fee. I decline to order that either party reimburse the other the filing fee.

**Conclusion**

I grant the tenant's application to cancel the One Month Notice. The One Month Notice is cancelled and of no force or effect.

I dismiss, without leave to reapply, the tenant's application to cancel the 10 Day Notice.

I dismiss the landlord's application for a monetary order for rental arrears without leave to reapply.

I dismiss the landlord's application for a monetary order for unpaid utilities with leave to reapply.

I dismiss both parties' applications for reimbursement of their respective filing fees.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

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: July 28, 2021

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Residential Tenancy Branch