



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNL-4M-MT, OLC

### Introduction and Preliminary Matters

On May 9, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use pursuant to Section 49 of the *Act*, seeking more time to cancel the Four Month Notice pursuant to Section 66 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not attend at any point during the 40-minute teleconference. At the outset of the hearing, I informed the Landlord that recording of the hearing was prohibited and he was reminded to refrain from doing so. He acknowledged this term, and he provided a solemn affirmation.

This hearing was scheduled to commence via teleconference at 11:00 AM on September 16, 2021.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:40 AM. Only the Respondent dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Applicant did not dial in and I

also confirmed from the teleconference system that the only party who had called into this teleconference was the Landlord.

As the Applicant did not attend the hearing by 11:40 AM, I find that her Application for Dispute Resolution has been abandoned. As such, I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on April 15, 2012 as an unwritten, month-to-month tenancy, and it ended on June 30, 2021 based on an Order of Possession (the relevant file number is noted on the first page of this Decision). Rent was established at an amount of \$939.00 per month and it was due on the first day of each month. A security deposit was not paid. The Landlord did not have a written tenancy agreement completed as required by the *Act*.

He testified that the Notice was served to the Tenant by placing it in her mail slot on May 7, 2021. The Tenant clearly received this Notice as she disputed it on May 9, 2021. Neither party submitted a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be uploaded by the Landlord as it was essential to the matter at hand. A copy of this Notice was uploaded during the hearing.

The Notice indicated that \$939.00 was owing and that it was due on May 1, 2021. He advised that the Notice was served because the Tenant did not pay any of May 2021 rent. Therefore, he should be entitled to May 2021 rent. The effective end date of the tenancy was noted as May 17, 2021 on the Notice.

As well, he advised that despite the Tenant being served the Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use in February 2021, he should also be entitled to June 2021 rent.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the

effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant was served the Notice on May 7, 2021. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *“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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the Notice was served on May 7, 2021 by being placed in the mail slot, the Notice was deemed received after three days. Thus, the Tenant must have paid the rent in full by May 15, 2021 or disputed the Notice by Monday May 17, 2021 at the latest. The undisputed evidence is that the Tenant did not pay the rent owing and she did not have a valid reason under the *Act* for withholding the rent. While she disputed the Notice within the required timeframe, as she did not attend the hearing, her Application has been dismissed without leave to reapply. As such, I am satisfied that the Tenant breached the *Act* and jeopardized her tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, as the Tenant has not complied with the *Act*, and as the Tenant's Application is dismissed, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. However, as the Tenant has already vacated the rental unit, it is unnecessary to award an Order of Possession.

With respect to the Landlord's request for June 2021 rent, the undisputed evidence is that the tenancy ended on June 30, 2021 by way of the Order of Possession granted in the May 7, 2021 Decision on the Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use. Therefore, the Tenant would be entitled to the one month's compensation owed as a result of being served that Notice.

While the Tenant disputed the 10 Day Notice to End Tenancy for Unpaid Rent, a Decision on this Notice regarding the end of tenancy would not have been addressed until this hearing was finalized, on September 16, 2021. Had this tenancy ended by way of a determination on the 10 Day Notice to End Tenancy for Unpaid Rent, then the compensation requirements would not have been effective. However, as the tenancy in

fact ended by virtue of the Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use on June 30, 2021, I am satisfied that the Landlord is not entitled to June 2021 rent as this would have been the Tenant's one month compensation.

Pursuant to Section 67 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

Item	Amount
Rental arrears for May 2021	\$939.00
<b>Total Monetary Award</b>	<b>\$939.00</b>

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Based on the above, the Landlord is provided with a Monetary Order in the amount of **\$939.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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 *Residential Tenancy Act*.

Dated: September 16, 2021

---

Residential Tenancy Branch