



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, LRE, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; and
- to recover the cost of the filing fee.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

There were no issues raised about service of the tenant's application. The landlord submitted that she did not receive the tenant's evidence until shortly before the hearing. I allowed the hearing to continue, as the landlord did not request an adjournment.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters-

The evidence at the hearing confirmed that the tenancy has ended. As a result of the above, I find the tenant's application seeking to cancel the Notice in order to continue the tenancy is moot as the tenancy ended after the tenant filed to dispute the Notice.

I also decline to consider the tenant's request for an order suspending or setting conditions on the landlord's right to enter the rental unit as this matter concerns an on-going tenancy.

Given the above, I dismiss the tenant's entire application, without leave to reapply.

The hearing proceeded to consider whether the landlord is entitled to a monetary order for unpaid monthly rent, pursuant to section 55 (1.1) of the Act.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order consisting of unpaid monthly rent?

#### Background and Evidence

The landlord submitted a complete copy of the written tenancy agreement showing a tenancy start date of February 15, 2018 and a monthly rent of \$1,000, due on the 31<sup>st</sup> or last day of the month.

The tenant was served with the Notice on May 1, 2021, by attaching it to the tenant's door. The Notice listed unpaid rent of \$1,000 owed as of April 30, 2021. The effective move-out, or end-of-tenancy date listed was May 13, 2021. The tenant confirmed receiving the Notice on May 1, 2021.

The landlord asserted that since the issuance of the Notice, the tenant has not paid any rent and now owes rent for the months of May, June, July and August, 2021, of \$1,000 each month. In support of this claim, the landlord submitted that the tenant removed

their property and moved out of the rental unit in August 2021, without paying any further rent.

The landlord submitted that she has made her own application for dispute resolution for monetary compensation against the tenant, which is set for another day and time.

Landlord's witness –

The landlord's witness stated that he observed the landlord knock on the tenant's door to serve the tenant the Notice, and that no one answered.

*Tenant's response-*

In response, the tenant said she did not refuse to pay the monthly rent for May 2021, as she had the cash ready to pay and the landlord failed to come to the rental unit to pick-up the payment. Further, according to the tenant, she has always had the monthly rent available, and offered to meet the landlord on the day it was due, but the landlord refused.

The tenant said she vacated the rental unit near the beginning of June 2021 and denied having possession of the rental unit into August, as the landlord changed the locks and had new tenants move into the rental unit in June.

The tenant confirmed that she did not provide the landlord with written notice to vacate.

### Analysis

I have reviewed the Notice and find it complies with section 52 *[form and content of notice to end tenancy]*.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon

receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

When a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I find that the tenant owed the landlord rent when the Notice was issued. Further, I find that they did not pay the rent owed to the landlord within five days of receiving the Notice. I do not accept that the tenant made reasonable attempts to pay the landlord monthly rent and find it is not the landlord's responsibility to chase down the tenant for the monthly rent. The tenant was made aware her tenancy was in jeopardy, as the landlord served her the Notice.

I therefore find the landlord submitted sufficient evidence to support the Notice.

I order the tenancy ended on the effective date of the Notice, or May 13, 2021.

Section 55(1.1) of the Act states if a tenant's application is in relation to a landlord's notice to end a tenancy for non-payment of rent, which is the proper form and content, and if that application is dismissed, the director must grant an order requiring the payment of the unpaid rent.

As I have dismissed the tenant's application seeking cancellation of the landlord's Notice, I grant the landlord a monetary order in the amount of \$1,000, the amount of unpaid monthly rent listed and owing, and was in relation to the landlord's notice.

I must note that I have not awarded the landlord any further loss of rent revenue, as I find that is considered compensation as to an overholding tenant, not unpaid monthly rent, as I ordered the tenancy ended on May 13, 2021. The landlord would still be entitled to compensation for loss of rent revenue.

The landlord has filed her own application, which seeks loss of rent revenue, and that matter is to be heard separately at a later time and date. As the parties disputed the date the tenant vacated the rental unit, I would encourage both parties, if they have not already done so, to submit evidence on the landlord's application to support their respective positions on this matter.

Conclusion

The tenant's application is dismissed in full, without leave to reapply, as the tenancy ended prior to the hearing.

The landlord has been issued a monetary order in the amount of \$1,000, in relation to the amount listed on the landlord's Notice, pursuant to section 55(1.1) of the Act.

Should the landlord require enforcement of the monetary order, the order must be first served on the tenant with a demand for payment letter and may be filed in the Provincial Court (Small Claims) 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*. 71. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 9, 2021

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Residential Tenancy Branch