



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DBA VINNELS PROPERTY RENTALS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 4, 2021 ("10 Day Notice"), pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The landlord's two agents, "landlord DV" and "landlord JF," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. and ended at 9:50 a.m. I monitored the teleconference line throughout this hearing. 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 landlord's two agents and I were the only people who called into this teleconference.

Landlord DV confirmed that he owns the landlord company named in this application. He stated that the landlord company is an agent for the owner of the rental unit. He confirmed that both he and landlord JF had permission to speak on behalf of the landlord company and the owner at this hearing.

At the outset of this hearing, I informed both landlord agents that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. Both landlord agents separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both landlord agents. They asked questions, which I answered. They did not make any adjournment or accommodation requests.

Landlord JF confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

Landlord JF and landlord DV testified that they both personally served the tenant with the landlord's evidence on November 24, 2021. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's evidence on November 24, 2021.

Landlord JF testified that he posted the landlord's 10 Day Notice to the tenant's rental unit door on August 4, 2021. The landlord provided a signed, witnessed proof of service to confirm same. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on August 7, 2021, three days after its posting.

#### Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply. I informed both landlord agents of my decision verbally during this hearing.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

#### Preliminary Issue – Unpaid Rent

Section 55(1.1) of the *Act* states the following:

*55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.*

Effective on March 25, 2021, the landlord is entitled to a monetary order for unpaid rent without filing a separate application. The tenant filed this application on August 4, 2021. As noted above, the tenant's application to cancel the 10 Day Notice was dismissed without leave to reapply.

### Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's two agents, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Landlord JF testified regarding the following facts. This tenancy began on June 2, 2019. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant vacated the rental unit with most of his furniture but left some of his clothing and Christmas ornaments behind, when the landlord inspected the rental unit on December 13, 2021.

Landlord JF stated the following facts. The landlord issued the 10 Day Notice, which has an effective move-out date of August 17, 2021, indicating that rent in the amount of \$10,879.42 was due on August 12, 2021 and utilities of \$2,189.87 was due on August 4, 2021. The August 12, 2021 due date for rent was a "typo" as it should have read August 1, 2021, as rent is due on the first day of each month.

The tenant provided a copy of the 10 Day Notice, which did not include the landlord's name, signature, or date when the notice was signed, on page 1 of the notice. Landlord

JF said that the landlord's copy of the notice, as provided for this hearing, was signed, dated, and included the landlord's name. He confirmed that the tenant was served with the completed copy, including the date, landlord's name and signature. He stated that he thought the tenant altered his own copy of the 10 Day Notice to remove the landlord's name, signature, and date.

The landlord seeks an order of possession based on the 10 Day Notice. The landlord seeks a monetary order but did not indicate the amount being sought. The landlord seeks to retain the tenant's security deposit of \$750.00. Landlord JF stated that all of the landlord's rent, utilities, and late rent fees were indicated on the tenant's rent ledger provided as evidence by the landlord for this hearing. He pointed to pages 28 to 30 of the landlord's evidence package. He explained that he "can't give a verbal breakdown" of the amounts in the rent ledger because there was so much information contained in it, since the beginning of this tenancy. He claimed that rent of \$1,500.00 was due for each month, the tenant made erratic rent payments, and landlord DV tried to help the tenant because he had a young child.

### Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which the landlord said was the first day of each month. Section 52(d) of the *Act* requires the notice to indicate the grounds for ending the tenancy.

I find that the tenant did not have notice of the correct amounts of rent or utilities due on the correct dates. The 10 Day Notice indicates a rent amount of \$10,879.42, due on August 12, 2021, after the notice was issued by the landlord on August 4, 2021. The 10 Day Notice indicates a utilities amount of \$2,189.87 due on August 4, 2021.

I find that the tenant did not have an opportunity to pay the rent or utilities in order to cancel the 10 Day Notice because the rent and utilities amounts, and the due dates supplied by the landlord, were incorrect.

Neither of the landlord's two agents provided sufficient information about the rent during this hearing, nor did they go through their rent ledger in any detail. Landlord JF agreed that the due date for rent was incorrect on August 12, 2021, and it should have been August 1, 2021. The amount of outstanding rent indicated in the tenant's rent ledger up to and including November 2021 is \$14,229.42. The landlord did not indicate the amount up to and including August 2021 in the rent ledger. However, according to the rent ledger, rent of \$1,500.00 was unpaid in September, October, and November 2021,

totalling \$4,500.00. Reducing the above total amount of \$14,229.42 by \$4,500.00, to remove the rent from September to November 2021, brings the total to \$9,729.42 due for August 2021. Yet, the landlord indicated a higher amount of \$10,879.42 due for August 2021. This is an incorrect amount for rent on the 10 Day Notice.

Neither of the landlord's two agents provided sufficient information about the utilities during this hearing, nor did they go through any of their utility bills provided as evidence. Landlord DV stated that utilities were due on August 4, 2021. The outstanding utilities indicated in the tenant's rent ledger up to and including November 2021 is \$2,856.84. The landlord did not indicate the amount up to and including August 2021. However, according to the rent ledger, utilities of \$229.32 was unpaid from August 24 to October 22, 2021 and utilities of \$216.20 was unpaid from June 2 to August 23, 2021, totalling \$445.52. Reducing the total amount of \$2,856.84 by \$445.52, to remove the utilities from June to October 2021, brings the total to \$2,411.32. Yet, the landlord indicated a lower amount of \$2,189.87 due for August 4, 2021. Even reducing the \$2,411.32 by \$223.07 for utilities from April 23 to June 22, 2021, brings the total to \$2,188.25, which is lower than the \$2,189.87 claimed by the landlord for August 4, 2021. Further, the utilities were not due on August 4, 2021, according to the rent ledger, as the cut-off dates above are June 22, 2021 and August 23, 2021. This is an incorrect amount for utilities on the 10 Day Notice.

Accordingly, I find that the landlord is not entitled to an order of possession based on the 10 Day Notice. I find that the landlord's 10 Day Notice does not comply with section 52 of the *Act* because it indicates the incorrect amounts of rent and utilities due on the incorrect dates. The landlord's 10 Day Notice, dated August 4, 2021, is cancelled and of no force or effect. I informed the landlord's two agents of my decision verbally during this hearing.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlord is not entitled to a monetary order for rent or utilities. I informed the landlord's two agents of my decision verbally during this hearing. I find that the landlord's 10 Day Notice and the rent ledger provided by the landlord indicate different and incorrect amounts for rent and utilities, due on different and incorrect dates. Landlord JF confirmed that he was relying on this rent ledger during the hearing, and he

could not provide a verbal breakdown for same. The landlord did not indicate what amounts they were seeking for rent or utilities at this hearing. The information supplied by the landlord in the rent ledger was incorrect and not reviewed by the landlord's two agents during this hearing.

I notified the landlord's two agents that if they wanted to apply for an order of possession or a monetary order against the tenant in the future, they could file an application, pay a filing fee, and provide proof and evidence of same. I informed them that I could not provide legal advice to them, but they could retain a lawyer for same, if they wanted to do so. They confirmed their understanding of same.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord's 10 Day Notice, dated August 4, 2021, is cancelled and of no force or effect.

The landlord is not entitled to an order of possession based on the 10 Day Notice, dated August 4, 2021.

The landlord is not issued a monetary order for rent or utilities against the tenant, at this hearing.

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: December 14, 2021

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Residential Tenancy Branch