



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on November 1, 2021.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenant testified that they received the Notice on November 1, 2021. The tenant stated that their rent was paid, and that the landlord had the cheque for rent and did not cash it. The tenant stated that the landlord was informed that the money was in their account.

The tenant testified that they are not happy living at the rental unit and will vacate on December 31, 2021.

The landlord's agent testified that they sent the tenant a text message on November 1, 2021 asking if the landlord can deposit the rent cheque today.

The landlord stated the text message shows as follows, I have only reproduced as written a portion of the text messages filed in evidence.

November 1, 2021

Sorry I m going threw a lot right now,  
ok I own 2 dump trucks and Excavator,  
I just put one of the dump trucks on  
marketplace and craigslist to sell  
for half price you can check,. 1998  
Kenworth With Cummings and 14  
with 18 speed four transmission for  
44,000. If you can give me a couple  
days it should sell fast and I'll give you  
a couple months rent

If not that's OK give me a Advection  
notice

November 9, 2021

I'm not moving out I went to the tenancy broad and filed the paperwork to have a hearing about your shenanigans. they told me I don't have to move intel the hearing

They told me it's pretty back up hearing should be end of January or February have a great day

My lawyer is very very good and does won't me to eny Communication with you or your dad !

The landlord stated they have not received the outstanding rent in the Notice or subsequent rent for December 2021.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

### **Rules about payment and non-payment of rent**

**26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy*

*agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

## **How to end a tenancy is defined in Part 4 of the Act.**

### **Landlord's notice: non-payment of rent**

*46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

*(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

...

*(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.*

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

I do not accept the tenant's evidence that they informed the landlord that the cheque was cashable on November 1, 2021. This is not support by the evidence as the tenant wanted the landlord to wait for a couple of days to see if their truck would sale and to serve them with an eviction notice, which the landlord did.

Furthermore, on November 9, 2021 the tenant informed the landlord that they would not be moving out. I find if the tenant truly had the rent money available they would have informed the landlord that the cheque was now cashable. Rather than inform the landlord that it would be a lengthy delay for a hearing, which it was not, and state they have a good lawyer.

I find the tenant failed to pay the rent. I find the tenant breached section 26 of the Act. I find the Notice is valid and remains in full force and effect.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

### **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.

(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.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find the tenant has failed to pay rent arrears of \$3,677.00 and a subsequent rent for December 2021 of \$3,000.00. I find the landlord is entitled to monetary order for unpaid rent in the total amount of **\$6,677.00**. I find the landlord is entitled to offset the unpaid rent with the security deposit of \$1,500.00. Therefore, I grant the landlord a formal order for the balance due of **\$5,177.00**.

At the conclusion of the hearing the landlord stated they will not enforce the order of possession until December 31, 2021. If the tenant can confirm by 11:15 today, December 17, 2021, if the rent cheque for November 2021 is cashable. The tenant

confirmed they will call the person who takes care of their account and confirm by 11:15am.

Should the cheque be cashable, the landlord must deduct the amount owed from the monetary order.

### Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order for the unpaid rent..

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 17, 2021

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Residential Tenancy Branch