



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding M. BONN ENTERPRIZES LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was scheduled to convene at 9:30 a.m. this date by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlord was represented at the hearing by an agent who gave affirmed testimony. The tenant also attended but was 10 minutes late.

The parties did not agree that evidence had been exchanged, and both parties indicated that the evidentiary material was posted to each other's doors, which was disputed by both parties.

A party attending a hearing must be able to establish how and when evidence has been exchanged. I am not satisfied that either party has complied, and the only evidence that I will accept in the circumstances is the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

### Issue(s) to be Decided

Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

The landlord's agent testified that this tenancy began on March 1, 2020 as a 1 year fixed term which reverts to a month-to-month tenancy after the 1 year term, and the tenant still resides in the rental unit. Rent in the amount of \$1,300.00 is payable on the

1<sup>st</sup> day of each month and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit in the amount of \$650.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and the landlord's agent does not reside on the property.

The landlord's agent further testified that on September 7, 2021 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. The tenant has provided 1 page of a 2-page form of the Notice, and it is dated September 7, 2021 and contains an effective date of vacancy of September 17, 2021 for unpaid rent in the amount of \$1,300.00 that was due on September 7, 2021. The tenant had not paid rent for September.

On September 10, 2021 the tenant gave a bank draft to the landlord in the amount of \$1,000.00, and on October 1, 2021 the landlord received a cheque from a charity on behalf of the tenant in the amount of \$300.00. The tenant asked for a receipt and the landlord's agent replied that the charity gets the receipt, not the tenant. The landlord's agent sent a text message to the tenant saying that rent had been paid for September. No other written document was provided to the tenant.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. Further, the *Act* specifies that any such notices given to a tenant must be in the approved form. In order for me to rule on a document, the document must be provided as evidence for the hearing. In this case, the landlord has not provided a copy of a notice to end the tenancy, and the tenant has provided only the first page of a 2-page form. Therefore, I cannot be satisfied that any notice given was in the approved form.

The 1 page document provided by the tenant is in an older version of the approved form. I would not cancel the Notice for that reason alone.

However, where a landlord collects rent after the effective date of a notice to end a tenancy, the landlord must give the tenant a receipt or some other written document to indicate that the rent is received for use and occupancy only and does not serve to reinstate the tenancy. The landlord testified that no receipts or other written documents were given, and that there are currently no rental arrears. Therefore, I am satisfied that the tenant has continued to pay rent beyond September 17, 2021 which is the effective date of vacancy contained in the Notice.

Given that I do not have the full Notice, and the landlord has effectively reinstated the tenancy by collecting rent beyond the effective date of the Notice and not advising the tenant that it is accepted for use and occupancy only, I must cancel the Notice.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 7, 2021 is hereby cancelled and the tenancy continues.

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: January 28, 2022

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Residential Tenancy Branch