



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FFT

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The Applicant applied on November 8, 2021 for:

- an order to cancel a 10 Day Notice to End Tenancy For Unpaid Rent, dated November 5, 2021 (the 10 Day Notice); and
- the filing fee.

The hearing started at 9:30 a.m. The Applicant did not attend, though the teleconference line remained open for 10 minutes. The Respondent was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Rule 7.3 permits an arbitrator to conduct a hearing in the absence of any party, or dismiss the application with or without leave to re-apply.

The Respondent testified they served their responsive evidence on the Applicant in person on January 13, 2022.

The Respondent testified that as the Applicant was still in the unit, the Respondent is seeking an order of possession as well as unpaid rent.

As the application and evidence described the rental unit as being in an “inn” and a “hotel,” I first need to consider whether or not I have jurisdiction to hear the matter.

### Issues to be Decided

1. Does this matter fall under the jurisdiction of the Act?
2. If so, is the Respondent entitled to an order of possession and a monetary order due to non-payment of rent?

### Background and Evidence

#### *Jurisdiction*

The Respondent testified that the inn provides a monthly rental option which includes room, hydro, cable, and internet. Rent is due on the first of the month, and the term is month-to-month.

The Respondent testified that the inn does not have a written agreement with the Applicant, the Applicant lives at the inn “full time,” and as far as the Respondent knows, the Applicant does not have another permanent address.

The Respondent testified that the Applicant has done part-time contract work for the inn, but has never been an employee.

The Respondent submitted that she considers the living arrangement to be a tenancy.

The Respondent provided the following about the living arrangement. It began July 17, 2019; rent is \$850.00, due on the first of the month; and the Applicant did not pay a security deposit.

The Respondent testified that the Applicant used to fix washing machines for the inn, and do occasional other work for the inn as a contractor, and came to live at the inn when his planned housing was not ready. The Respondent offered him a room for free to give him time “to figure things out.” In July 2019, when it became clear the Applicant’s planned housing was not going to work out, the inn began charging him rent.

The Respondent testified that the Applicant suggested that rather than the inn giving him a cheque for work done, they take his rent out of the money owed to him, to save him a trip to the bank.

### *Unpaid Rent*

The Respondent testified that following a serious illness, the Applicant got behind in his rent.

The Respondent testified that they served the 10 Day Notice on the Tenant by posting it to the door on November 5, 2021. The Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenant has failed to pay rent of \$2,550.00 due on November 1, 2021. In the hearing, the Respondent submitted that the amount on the 10 Day Notice should be \$2,526.00, not \$2,550.00.

The Respondent testified that the Applicant owes outstanding rent as follows:

<b>Month (2021)</b>	<b>Rent due</b>	<b>Rent paid</b>	<b>Outstanding amount</b>
June	\$850.00	\$0.00	\$850.00
July	\$850.00	\$0.00	\$850.00
August	\$850.00	\$24.00	\$826.00
		<b>Total</b>	<b>\$2,526.00</b>

The Respondent testified the Applicant has paid rent in full from September 2021 to January 2022.

The Respondent submitted as evidence a copy of a letter to the Applicant regarding back rent owing, and a copy of a ledger showing the Applicant's monthly housing charges and payments.

### Analysis

Based on the affirmed testimony of the Respondent that the Applicant has paid monthly rent to live at the inn since 2019, that the Applicant has no other permanent residence, that the Applicant is not residing there for business purposes, and that the Respondent considers a tenancy to exist, I find that this living arrangement is a tenancy, and falls within the jurisdiction of the Act, in accordance with section 4, and [Residential Tenancy Policy Guideline 24. Jurisdiction](#). Therefore, from here on I will refer to the parties as Landlord and Tenant.

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the Tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Pursuant to section 46 (1) of the Act, 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.

I accept the Landlord's undisputed affirmed testimony and evidence that the Tenant owes outstanding rent in the amount of \$2,526.00. Based on the testimony of the Landlord, I find they served the 10 Day Notice on the Tenant in accordance with section 88 of the Act. The Tenant is deemed to have received it on November 8, 2021 pursuant to section 90.

I find the 10 Day Notice meets the form and content requirements of section 52.

Section 55 (1) of the Act states that when a tenant's application to cancel a notice to end tenancy is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must grant an order of possession to the landlord.

Pursuant to section 55 (1.1) of the Act, I find the Landlord is entitled to a monetary order for unpaid rent in the amount of \$2,526.00.

### Conclusion

The Tenant's application is dismissed.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant.

The Landlord is granted a monetary order in the amount of \$2,526.00 for 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: February 3, 2022

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Residential Tenancy Branch