



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAIN STREET HOSTEL (SOURCE ENTERPRISES LTD) and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, RR, MNRT, OLC, LRE, MNDCT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for the cost of emergency repairs, under sections 33 and 67;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- a monetary order for compensation for damage or loss under the Act, the Regulation or the tenancy agreement, pursuant to section 67.

Both parties attended the hearing. The respondent was represented by director LS. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

I note that sections 55 (1) and (1.1) of the Act require that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to an order of possession and monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

#### Preliminary Issue – Correction of the tenant's Name

At the outset of the hearing the tenant affirmed her legal name is QC but she is also known as SC.

Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application to name the tenant QC.

#### Preliminary Issue – Landlord

The tenant stated the landlord is LS.

LS testified the landlord is Main Street Hostel (Source Enterprises Ltd) and LS represents the landlord.

The Notice says the landlord is Main Street Hostel (Source Enterprises Ltd).

Based on the more convincing testimony offered by LS and the Notice, I find the landlord is Main Street Hostel (Source Enterprises Ltd) and that LS represents the landlord.

Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application to name the respondent landlord Main Street Hostel (Source Enterprises Ltd).

Hereinafter, I will refer to LS as "the landlord".

#### Preliminary Issue – Update of Addresses

The parties corrected the tenancy and tenant's addresses.

Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application to update the tenancy and tenant's addresses.

### Preliminary Issue – Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 day notice to end tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

### Issues to be Decided

Is the tenant entitled to cancellation of the Notice?

If the tenant's application is cancelled, is the landlord entitled to an order of possession and a monetary order?

### Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on October 06, 2019. Monthly rent is \$450.00, due on the fifth day of the month. The landlord did not collect a security deposit. The tenancy agreement was submitted into evidence.

The tenant confirmed receipt of the Notice in person on February 02, 2022. The tenant submitted this application on February 04, 2022 and continues to occupy the rental unit.

A copy of the February 02, 2022 Notice was submitted into evidence. It indicates:

You have failed to pay rent in the amount of: “January 450, plus Feb 450. Oct, Nov, Dez 1350. Total 1800 ARREARS. Negotiable money orders 2021: 1125 should be 1350”

The landlord affirmed she did not attach a ledger to the Notice.

The tenant stated she understands the total amount of rental arrears. Later the tenant testified she would like to be assisted by an advocate.

The tenant said she tried to pay rent in January 2022 but the landlord refused to receive it because she required rent in the amount of \$650.00. The tenant affirmed the landlord received a money order for rent due in October, November and December 2021, but did not cash it.

The landlord stated the tenant did not try to pay rent in January 2022 and the money order was in the name of LS, not Main Street Hostel (Source Enterprises Ltd).

### Analysis

Based on the undisputed testimony offered by both parties, I find the tenant received the Notice on February 02, 2022. I find the tenant disputed the Notice within the timeframe of section 46(4) of the Act.

Section 52 of the Act states:

**In order to be effective, a notice to end a tenancy must be in writing and must**

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], **state the grounds for ending the tenancy,**

(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and

(e) when given by a landlord, be in the approved form.

(emphasis added)

I find the Notice does not comply with section 52(d), as it does not indicate the amount of rent not paid and when it was due. I find that the statements “January 450, plus Feb

450. Oct, Nov, Dez 1350. Total 1800 ARREARS. Negotiable money orders 2021: 1125 should be 1350” are vague, as the landlord did not indicate the exact amount of rent not paid and when it was due. Furthermore, the tenant’s testimony about understanding the total amount of rental arrears was contradictory. I also note that the Notice mentions the unpaid rent of February 2022 and it was served on February 02, 2022, 3 days before February 2022 rent was due on February 05, 2022.

As the Notice does not comply with section 52 of the Act, I find it is not effective and I cannot issue an order of possession or a monetary order.

I note that the tenant must pay rent on the due date and the landlord must provide a receipt for rent paid in cash, per section 26 of the Act:

(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.

(2)A landlord must provide a tenant with a receipt for rent paid in cash.

(3)Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a)seize any personal property of the tenant, or

(b)prevent or interfere with the tenant's access to the tenant's personal property.

The landlord is at liberty to serve a new notice to end tenancy for unpaid rent. The landlord may only impose a rent increase in accordance with sections 41, 42 and 43 of the Act.

### Conclusion

The Notice dated February 02, 2022 is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

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: May 11, 2022

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Residential Tenancy Branch