



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, LRE, FFT

### Introduction

On April 4, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that her Notice of Hearing and evidence package was served to the Landlord by registered mail; however, she was not sure when this was done, but it was sent “maybe seven days after” it was provided to her. The Landlord confirmed that she received this package, and despite this package possibly being served late and not in accordance with the timeframe requirements of Rule 3.1 of the Rules of Procedure (the “Rules”), she had no position with respect to this possible late service. Based on this testimony, I am satisfied that the Landlord received the Notice of Hearing and evidence package. As such, I have accepted the Tenant’s evidence and will consider it when rendering this Decision.

The Landlord advised that she served her evidence to the Tenant by placing it in the Tenant's mailbox on July 15, 2022, and that the Tenant told her to do so on July 15, 2022, via text. The Tenant confirmed that she asked the Landlord to serve this evidence in this manner on July 15, 2022, and she acknowledged that she received this evidence on or around July 23, 2022. Based on this testimony, I am satisfied that the parties likely had a text exchange on July 15, 2022, where the Tenant informed the Landlord that leaving any evidence in her mailbox would be sufficient.

As such, I find it more likely than not that the Landlord place this evidence in the Tenant's mailbox on July 15, 2022. Consequently, I am satisfied that the Tenant was deemed to have received this evidence three days after it was placed in the Tenant's mailbox. Furthermore, as service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

- Is the Tenant entitled to recover the filing fee?
- Is the Landlord entitled to a Monetary Order for compensation?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The parties agreed that the tenancy started on November 1, 2020, that rent was established at an amount of \$1,200.00 per month, and that it was due on the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$600.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence. As a note, the Landlord was cautioned that her use of the vacate clause in the tenancy agreement was not permitted, nor would it be enforceable.

The Landlord advised that the Notice was served to the Tenant by hand on April 4, 2022, and the Tenant confirmed receiving the Notice in this manner. The Notice indicated that \$5,700.00 was owing for rent on April 2, 2022. The effective end date of the tenancy was noted on the Notice as April 12, 2022.

The Landlord testified that the Tenant was in arrears rent for the following months:

- March 2021               \$700.00
- May 2021                \$200.00
- October 2021           \$600.00
- November 2021        \$800.00
- December 2021       \$900.00
- February 2022         \$1,200.00
- March 2022             \$600.00
- April 2022             \$700.00
- **Total Arrears        \$5,700.00**

In addition, she advised that the Tenant has not paid any rent since April 2022. She confirmed that the Tenant was never permitted to withhold any rent. She referenced her documentary evidence to support her position that the Tenant simply refused to pay the rent as required under the *Act*. In addition to an Order of Possession, the Landlord is seeking a Monetary Order for unpaid rent in the amount of **\$9,300.00**, which is calculated as the rental arrears, plus rent owing for May, June, and July 2022.

The Tenant advised that she did not have any position with respect to the incorrect date that the Landlord indicated rent was due on the Notice. She confirmed that she did not pay these amounts of rent owing, and she attributed part of this to waiting on income assistance approval. As well, she indicated that she elected to withhold the rent because she was dissatisfied with repair issues that she believed were required, but ignored by the Landlord. However, she confirmed that she did not have any authority to withhold the rent under the *Act*. As well, she acknowledged that she left the keys in the rental unit on July 20, 2022, but she never informed the Landlord of this at any point.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant clearly received the Notice on April 2, 2022. According to Section 46(4) of the *Act*, the Tenant had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenant received the Notice on April 2, 2022, she must have paid the rent in full or disputed the Notice by April 7, 2022, at the latest. The undisputed evidence is that the Tenant did not pay the rent in full to cancel the Notice. While the Tenant disputed the Notice within the five-day time frame, the Tenant clearly did not have a valid reason under the *Act* for withholding the rent. By her own acknowledgement, she confirmed that she initially was in arrears while waiting for income assistance, and then she simply elected to withhold the rent because of her own arbitrary determination of deficiencies in the rental where she decided, on her own accord, that she would then be entitled to withhold the rent.

As the consistent and undisputed evidence is that the Tenant did not pay any of the rental arrears, and that she did not have a valid reason under the *Act* for withholding the rent, I am satisfied that the Tenant breached the *Act* and jeopardized her tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that would ordinarily take effect **two days** after service of this Order on the Tenant. However, given that the Tenant has left the keys in the rental unit, albeit not informing the Landlord of this, I am satisfied that the Tenant has now given up vacant possession of the rental unit. As such, I do not find it necessary to grant the Landlord the Order of Possession.

Regarding the amount of unpaid rent, as the consistent and undisputed evidence is that the Tenant is in arrears for the rent, I grant the Landlord a monetary award in the amount of **\$9,300.00**.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee.

Pursuant to Sections 38 and 67 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

Item	Amount
Rental arrears for March 2021	\$700.00

Rental arrears for May 2021	\$200.00
Rental arrears for October 2021	\$600.00
Rental arrears for November 2021	\$800.00
Rental arrears for December 2021	\$900.00
Rental arrears for February 2022	\$1,200.00
Rental arrears for March 2022	\$600.00
Rental arrears for April 2022	\$700.00
Rental arrears for May 2022	\$1,200.00
Rental arrears for June 2022	\$1,200.00
Rental arrears for July 2022	\$1,200.00
Security deposit	-\$600.00
Pet damage deposit	-\$600.00
<b>Total Monetary Award</b>	<b>\$8,100.00</b>

### Conclusion

The Tenant's Application is dismissed without leave to reapply.

Based on the above, the Landlord is provided with a Monetary Order in the amount of **\$8,100.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: July 26, 2022

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Residential Tenancy Branch