



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two applications regarding a residential tenancy dispute. The tenant applied:

- on April 6, 2022 for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated April 1, 2022 (the first 10 Day Notice); and
- on April 16, 2022 for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated April 12, 2022 (the second 10 Day Notice).

The hearing began at 11:00 a.m. The tenant did not attend, although the teleconference line remained open for 10 minutes. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; she was also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified that the tenant served her with the Notice of Dispute Resolution Proceeding (NDRP) for the dispute of the first 10 Day Notice, but that she did not receive the NDRP for the tenant's dispute of the second 10 Day Notice. Based on the landlord's affirmed undisputed testimony, I find the tenant did not serve the NDRP for the dispute of the second 10 Day Notice in accordance with section 89 of the Act.

The landlord did not submit documentary evidence in response to the tenant's applications.

## Preliminary Matters

### *Jurisdiction*

The tenant's applications list the rental address as only a street number, without a unit number. The first 10 Day Notice lists identical addresses for the landlord and the tenant; the second 10 Day Notice notes the rental as being the "Bsmt" unit.

In the hearing, the landlord confirmed that the rental unit was a unit in the basement, separate from the landlord's unit, with its own kitchen and bathroom. Therefore, based on the unit information noted on the second 10 Day Notice submitted by the tenant, and the landlord's affirmed undisputed testimony, I have amended the application to record the rental unit as "Bsmt." This amendment is in accordance with section 64(3)(c) of the Act.

### *Dismissal of Applications*

The landlord testified that the tenant vacated the rental unit on May 1, 2022. The landlord testified she is no longer seeking an order of possession, and is not seeking to recover rent for May 2022, only the unpaid rent inclusive of April 2022.

As the landlord has testified the tenant vacated the rental unit, the tenant's application to dispute the first 10 Day Notice is dismissed.

The tenant's application to dispute the second 10 Day Notice is dismissed without leave to reapply, as it was not served on the landlord in accordance with the Act.

## Issue to be Decided

As the tenant's applications to cancel the notices are dismissed, is the landlord entitled to a monetary order for unpaid rent?

## Background and Evidence

The landlord confirmed the following particulars regarding the tenancy. It began July 1, 2021; rent was \$1,000.00, due on the first of the month; and the tenant paid a security deposit of \$500.00, which the landlord still holds.

Copies of the two 10 Day Notices are submitted as evidence.

The landlord testified she served the first 10 Day Notice on the tenant in person on April 1, 2022, and sent it by email on the same day. The first Notice is signed and dated by the landlord, gives the street address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The first 10 Day Notice indicates the tenancy is ending because the tenant failed to pay rent of “\$1,200 + \$500 due from Jan, Feb and March,” due on April 1, 2022.

The landlord testified she served the second 10 Day Notice on the tenant in person on April 12, 2022. The second Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The second 10 Day Notice indicates the tenancy is ending because the tenant failed to pay rent of \$800.00, due on April 1, 2022.

The landlord testified the tenant owes outstanding rent as follows. The Cumulative Rent Owing column is calculated based on the landlord’s testimony:

<b>Month</b>	<b>Rent due</b>	<b>Rent paid</b>	<b>Monthly outstanding amount</b>	<b>Cumulative rent owing</b>
December 2021	\$1,000.00	\$300.00	\$700.00	\$700.00
January 2022	\$1,000.00	\$1,800.00	-\$800.00	-\$100.00
February 2022	\$1,000.00	\$1,100.00	-\$100.00	-\$200.00
March 2022	\$1,000.00	\$1,000.00	\$0.00	-\$200.00
April 2022	\$1,000.00	\$0.00	\$1,000.00	\$800.00
		<b>Total</b>	<b>\$800.00</b>	<b>\$800.00</b>

### Analysis

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.

### *First 10 Day Notice*

Based on the testimony of the landlord that she served the first 10 Day Notice on the tenant in person on April 1, 2022, I find the landlord served the first Notice on the tenant in accordance with section 88 of the Act.

During the hearing, the landlord confirmed that rent was due on the first of the month.

The first 10 Day Notice served on the tenant is dated April 1, 2022. The Notice states that the tenancy is ending because the tenant has failed to pay rent due on April 1, 2022. Pursuant to section 46(1) cited above, the landlord was not entitled to issue a notice to end tenancy for unpaid rent until April 2, 2022, the day after rent is due. Therefore, the first 10 Day Notice is cancelled.

### *Second 10 Day Notice*

Based on the testimony of the landlord that she served the second 10 Day Notice on the tenant in person on April 12, 2022, I find the landlord served the second Notice on the tenant in accordance with section 88 of the Act.

I find the second 10 Day Notice meets the form and content requirements of section 52, and that it clearly indicates the tenancy is ending as the tenant has failed to pay rent in the amount of \$800.00, due on April 1, 2022.

I accept the landlord's undisputed affirmed testimony that the tenant owes outstanding rent in the amount of \$800.00.

Section 55(1) of the Act provides 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, an arbitrator must grant an order of possession to the landlord.

Section 55(1.1) provides that if an application referred to in 55(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 section 55(1) apply, an arbitrator must grant an order requiring the payment of the unpaid rent.

Therefore, having dismissed the tenant's application to cancel the second 10 Day Notice, and finding that the second Notice meets the form and content requirements of section 52, I find the landlord is entitled to a monetary order for unpaid rent.

Pursuant to section 55(1.1) of the Act, I find the Landlord is entitled to a monetary award for unpaid rent in the amount of \$800.00.

In accordance with section 72 of the Act, I allow the landlord to retain the tenant's \$500.00 security deposit in partial satisfaction of the amount owing. The landlord is entitled to a monetary order for \$300.00 ( $\$800.00 - \$500.00 = \$300.00$ ).

### Conclusion

The tenant's applications are dismissed.

The landlord is granted a monetary order in the amount of \$300.00.

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: August 05, 2022

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Residential Tenancy Branch