



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RP, OLC, LRE, RR, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order reducing rent for repairs, services or facilities agreed upon but not provided; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, I explained to the parties that the Rules of Procedure require that multiple applications contained in a single application must be related, and the hearing focused on the tenant's application seeking an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The parties agree that all evidence has been exchanged, and all evidence related to the notice to end the tenancy has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

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

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on December 20, 2021 and expires on December 31, 2022 thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$3,600.00 is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,800.00 as well as a pet damage deposit in the amount of \$400.00, both of which are still held in trust by the landlord. The rental unit is a house with a rear modular home on property of almost ½ acre, as well as a garage converted to a studio. A copy of the tenancy agreement has been provided as evidence for this hearing.

On May 4, 2022 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. A copy has been provided by the tenant for this hearing, and it is dated May 4, 2022 and contains an effective date of vacancy of May 15, 2022 for unpaid rent in the amount of \$1,600.00 that was due on May 1, 2022. The landlord testified that the tenant is currently in arrears of rent the sum of \$5,800.00 including rent for the month of August, 2022.

The landlord further testified that the parties agreed by email to a reduction of rent because, due to family issues, the landlord had not made required repairs on time. On March 1, 2022 the tenant proposed a payment schedule which credited the rent due by \$1,400.00 per month for the months of January, February and March, 2022 which is when the modular home at the back of the property was not usable. All work was completed by April 30, 2022, so based on the credit, the tenant owed \$1,600.00 effective May 1. Commencing June 1, 2022 and forward \$3,600.00 was due on the 1<sup>st</sup> day of each month. However, since June, the tenant has only paid \$2,200.00 each month for June, July and August, 2022 by e-transfer. The tenant was notified by email that the full rent was expected. The landlord provided the tenant with receipts indicating that the rent received was for use and occupancy only so as not to reinstate the tenancy.

**The tenant** testified that the tenant had responded to the landlord's advertisement to rent the main house for \$2,200.00 per month, and at that time the landlord had hoped to rent the other part of the property for \$1,400.00 per month. The parties agreed that both homes would be rented by the tenant and the tenant could rent the modular home to family members as a sub-lease. The modular unit was an active construction site, full of tools and other building materials and was not ready for renting but the landlord said it would be ready by January 1, 2022. The modular home had no water, heat or access.

On March 31, 2022 the tenant sent an email to the landlord but things were not resolved. The landlord responded and attempts were made in April to complete the repairs, but were not acceptable. The modular home now has water, but the heat source consists only of space heaters. The deck is dangerous and so is the railing, and there are still plumbing and access issues.

No move-in condition inspection report was completed, however the tenant completed one with the tenant's tenant, but it was not safe and not livable, and the tenant told the landlord. The modular home has not yet been used.

On April 1, 2022 the tenant proposed a payment schedule to the landlord showing that no rent would be payable for April, 2022; \$200.00 would be payable on May 1, 2022; and for June 1 and beyond the tenant would pay \$2,200.00. The landlord agreed by email on April 8, 2022, and the tenant made those payments. Copies of the emails exchanged have been provided for this hearing, as well as photographs.

Throughout April the landlord and friends would attend to do repairs every weekend. The landlord said that he built the modular home himself, but there are numerous issues, including unsafe electrical. The tenant had an electrician attend on April 2, 2022 who said that the installation of the electrical was not acceptable and not in compliance with the building code.

#### SUBMISSIONS OF THE LANDLORD:

Everything on the tenant's list was met and receipts as well as a letter from a plumber show that the rental unit is in good order. Construction waste was removed as of April 20, 2022. The modular home is 450 square feet and each of the 2 space heaters cover 250 square feet. Subletting was not written into the tenancy agreement.

#### SUBMISSIONS OF THE TENANT:

Construction waste remains on the property, gravel has not been dealt with nor stacked lumber, and material remains today. The landlord was well aware that the tenant had a family member to rent the modular unit.

#### 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*.

I have reviewed the emails and photographs provided for this hearing, and there is no question that the landlord agreed in writing to the payment schedule proposed by the tenant. That agreement included no payment of rent for April, 2022; \$200.00 for May, 2022 and \$2,200.00 for June and beyond, and until the landlord completes necessary work to the modular unit. The landlord's position is that the repairs were completed by the end of April, and therefore rent was to return to \$3,600.00 per month commencing in May, 2022, and notified the tenant of that in writing. The tenant's position is that the required repairs have not yet been completed.

The *Residential Tenancy Act* requires a landlord to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by the tenant. However, the *Act* also specifies that a tenant is required to pay rent in full when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement.

Given that the landlord notified the tenant in writing that repairs agreed to were completed at the end of April and the payment schedule was withdrawn, I find that the tenant was required to pay the rent. The tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or utilities is dismissed.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the law. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Since the tenancy is ending, I dismiss the balance of the tenant's application without leave to reapply.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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 08, 2022

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Residential Tenancy Branch