



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was scheduled to deal with two Applications for Dispute Resolution filed by the tenant to dispute a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice").

Both the landlord and the tenant appeared for the hearing. The parties were affirmed and the hearing process was explained to the parties.

I confirmed the tenant served the landlord with his proceeding package. I also confirmed the tenant received the landlord's evidence package containing rent receipts last week. The materials were admitted into evidence.

Both parties had the opportunity to make relevant submissions and to respond to the relevant submissions of the other party pursuant to the Rules of Procedure.

I noted that the tenant had filed two applications that appear to pertain to the same 10 Day Notice. The tenant confirmed that he erred in filing a second application and that he was intending to dispute just one 10 Day Notice.

I also amended the style of cause, by consent, to correctly name the tenant.

### Issue(s) to be Decided

1. Should the 10 Day Notice be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to a Monetary Order?

### Background and Evidence

The parties provided consistent testimony that the tenancy started several years ago and the landlord is holding a security deposit of \$625.00. The parties agreed the tenant's current monthly rent is \$1313.00 payable on the first day of every month.

On September 3, 2022 the landlord served the tenant with the subject 10 Day Notice indicating rent of \$560.00 was outstanding for August 2022 and \$1313.00 was outstanding for September 2022.

The tenant filed to dispute the 10 Day Notice within five days of receiving the 10 Day Notice, indicating he was suffering from financial difficulties due to a car accident. The tenant did not; however, pay the outstanding rent within five days.

The tenant testified that he was able to source funds from a third party to satisfy the outstanding rent but since it was more than five days after receiving the 10 Day Notice the owner was not willing to reinstate the tenancy so the third party did not make the payment.

The tenant made several partial payments to the landlord between October 3, 2022 and December 5, 2022 which were applied toward the arrears and subsequent months' rent. The last payment was made on December 5, 2022, leaving a balance outstanding of \$2717.00, as of December 5, 2022.

The tenant attempted to raise issues with respect to repairs not made in a timely manner and how the property owner operates; however, I did not permit such testimony to continue as it was irrelevant to the issue at hand.

The landlord requested an Order of Possession effective as soon as possible. The tenant did not object and stated he has already starting removing his possessions from the rental unit.

The landlord waived entitlement to a Monetary Order for the outstanding rent; however, the landlord requests authorization to retain the security deposit. The tenant did not oppose this request.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may legally withhold or not pay rent. I was not provided any evidence to suggest the tenant had such a legal right. Accordingly, I accept that the tenant owed rent of \$1313.00 on the first day every month.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

It was undisputed that the tenant received the subject 10 Day Notice on September 3, 2022. Although the tenant filed to dispute the 10 Day Notice within five days of receiving it, a tenant's financial difficulties are not a basis for cancelling a 10 Day Notice. It was also undisputed that the tenant did not present payment for the entire amount of the unpaid rent within five days of receiving the 10 Day Notice. Accordingly, I uphold the 10 Day Notice.

Although the effective date stated on the 10 Day Notice is incorrect, an incorrect effective date does not invalidate a 10 Day Notice and it automatically changes to comply with the Act. Therefore, I find the tenancy ended 10 days after the tenant received the 10 Day Notice, or September 13, 2022.

The tenant's application(s) for cancellation of the 10 Day Notice is/are dismissed.

Section 55(1) and (1.1) of the Act provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b)the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1)If an application referred to in subsection (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 subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

In this case, I have dismissed the tenant's application to cancel the 10 Day Notice. Upon review of the 10 Day Notice provided to me, I am satisfied that it meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession. I provide the landlord with an Order of Possession under section 55(1) of the Act, to be effective two (2) after it is served to the tenant.

Based on the rent receipts before me, I am satisfied the landlord has suffered unpaid and/or loss of rent in an amount that exceeds the security deposit and I authorize the landlord to retain the security deposit in satisfaction of the unpaid and/or loss of rent rather than provide the landlord a Monetary Order, as requested by the landlord.

### Conclusion

The landlord is provided an Order of Possession effective two (2) days after service of the Order of Possession upon the tenant.

The landlord is authorized to retain the tenant's security deposit in satisfaction of the unpaid and/or loss of 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: January 24, 2023

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Residential Tenancy Branch