



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNNDT, CNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed on October 5, 2022, under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause, (the “One Month Notice”) issued on September 27, 2022, for an order monetary order for compensation or other money owed, and to recover the cost of the filing fee.

The hearing dealt with a subsequent Application for Dispute Resolution by the tenant filed on December 7, 2022, under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) issued on December 3, 2022, and to have the landlord comply with the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, , and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the 10 Day Notice and the One Month Notice. The balance of the tenant’s applications are dismissed, with leave to reapply.

The parties were informed that if I found the tenancy would end based on the 10 Day Notice it would be unnecessary for me to determine if the One Month Notice was valid.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled?  
Should the One Month Notice be cancelled?

Background and Evidence

The tenancy began on June 1, 2021. Rent in the amount of \$1,500.00 was payable on the first of each month. A security deposit of \$750.00 was paid by the tenant.

The tenant confirmed that they received the 10 Day Notice on December 3, 2022. The tenant described in their application they were disputing the notice because “we are already in a dispute”.

The tenant testified that they did not pay the outstanding rent for December 2022, because the landlord had turned off the heat and had harassed them. The tenant stated they did not pay rent for January and February 2023 because they were in dispute.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

**Rules about payment and non-payment of rent**

*26 (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.*

...

**How to end a tenancy is defined in Part 4 of the Act.**

**Landlord's notice: non-payment of rent**

*46 (1) 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.*

*(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

...

*(4) Within 5 days after receiving a notice under this section, the tenant may*

*(a) pay the overdue rent, in which case the notice has no effect, or*

*(b) dispute the notice by making an application for dispute resolution.*

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenant admitted rent was not paid within 5 days after receiving the Notice. Further, the tenant had no authority under the Act to withhold rent simply because they were in a dispute with the landlord. I find the 10 Day Notice is valid and remains in full force and effect. I find the tenancy legally ended on December 15, 2022. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed, I find I must grant the landlord an order of possession and a monetary order, pursuant to section 55 of the Act.

### **Order of possession for the landlord**

**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) 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.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find the landlord is entitled to a monetary order for unpaid rent for December 2022, January and February 2023, in the amount of **\$4,500.00**. This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant. Should this amount remain unpaid the landlord may exercise their rights under section 38(3) of the Act and keep the security deposit to offset the above amount.

As I have found the tenancy has legally ended pursuant to section 46 and 55 of the Act. I find it unnecessary to consider the merits of the One Month Notice as the tenancy is over.

### Conclusion

The tenant's applications are dismissed. The landlord is granted an order of possession and a monetary order pursuant to section 55 of 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: February 17, 2023

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Residential Tenancy Branch