



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding SURREY GARDENS GP LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OLC, FFT, OPR, MNR, FFL

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On November 8, 2022, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2022. The Tenant also requested an order for the Landlord to comply with the Act, Regulation, or tenancy agreement.

On November 15, 2022, the Landlord applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2022.

The dispute was scheduled as a conference call hearing. Prior to the scheduled hearing, the parties made additional applications for dispute resolution which were joined to be heard together at this hearing.

- On December 7, 2022, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2022.
- On January 9, 2022, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 3, 2023.
- On February 12, 2022, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 7, 2023 and for an order for the Landlord to comply with the Act, Regulation, or tenancy agreement.
- On February 12, 2022, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2023.

- On December 13, 2022, the Landlord applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2022.

The Landlord and Tenant were present at the hearing. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters

The Landlord provided testimony confirming that the 10 Day Notice dated November 2, 2022, in the amount of \$571.28 was issued due to non payment of utility costs. The Landlord testified that on October 20, 2022, the Tenant was served with a demand letter to pay the utility costs and put the hydro electricity in his name. The Landlord confirmed that the 10 Day Notice was issued prior to the expiry of 30 days from when the Tenant received the demand letter.

The Tenant testified that he does not remember signing the tenancy agreement and he does not recall that he is responsible for paying hydro electricity.

Section 46(6) of the Act provides that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Since the Landlord issued the 10 Day Notice dated November 2, 2022, within 30 days of issuing the demand letter, I find that the 10 Day Notice was premature and it is set aside/ cancelled. The Landlord is at liberty to reapply for dispute resolution to make a claim against the Tenant for unpaid utility costs.

The Tenant wanted to proceed with a claim against the Landlord to compensate him for a loss of his quiet peaceful enjoyment. This request did not proceed. The Tenant is at liberty to apply for dispute resolution and make a claim for compensation against the Landlord.

The hearing proceeded based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2022.

Issues to be Decided.

- Should the 10 Day Notice dated December 2, 2022, be cancelled?
- Is the Landlord entitled to an order of possession and monetary order due to non-payment of rent owing under the tenancy agreement?

Background and Evidence

The Landlord and Tenant testified and agreed that the tenancy began on August 1, 2021, as a one year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,421.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$700.00.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2022 ("the 10 Day Notice") by posting the Notice to the Tenant's door. The 10 Day Notice indicates the Tenant failed to pay \$1,421.00 in rent that was due by December 1, 2022. The Landlord and Tenant provided a copy of the 10 Day Notice.

The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Tenant received the 10 Day Notice and disputed the 10 Day Notice on December 7, 2022, within the required five day time period.

The Landlord testified that the Tenant did not pay the December 2022, rent owing under the tenancy agreement within five days of the Tenant receiving of the 10 Day Notice. The Landlord testified that they received the \$1,421.00 rent payment on February 2, 2022.

In reply, the Tenant provided testimony that he did not pay the rent within 5 days of receiving the 10 Day Notice. He testified that he was seriously injured at work and

could not pay the rent. The Tenant confirmed that he made a rent payment to the Landlord in February 2023.

The Landlord is requesting to enforce the 10 Day Notice and is seeking an order of possession for the rental unit. The Landlord stated that the Tenant has not paid the rent for February and March 2023, and he owes the Landlord \$2,842.00 in unpaid rent. The Landlord is seeking a monetary order for unpaid rent in the amount of \$2,842.00.

In reply, the Tenant provided testimony confirming that he owes the Landlord for two months of unpaid rent.

### Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Based on the evidence before me and the testimony of the Landlord and Tenant, I find that the Landlord and Tenant agreed that rent in the amount of \$1,421.00 is due to be paid to the Landlord by the first day of each month. I find that the Tenant failed to pay the December 2022, rent due under the tenancy agreement within 5 days of receiving the 10 Day Notice.

I dismiss the Tenant's application to cancel the 10 Day Notice dated December 2, 2022.

Under section 55 of the Act, when a tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective two (2) 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 that the Tenant have failed to pay the two months of rent owing under the tenancy agreement. I find that the Tenant owes the Landlord \$2,842.00.

Since the tenancy is ending based on the 10 Day Notice dated December 2, 2022, there is no need to consider whether the tenancy is ending based on the following 10 Day Notices:

- a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 3, 2023.
- a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 7, 2023.
- a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2023.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was not successful with his applications the Tenant's request to recover the filing fees are dismissed. Since the Landlord was successful with their December 13, 2022, application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make that application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$2,942.00 comprised of \$2,842.00 in unpaid rent and the \$100.00 fee paid by the Landlord for this hearing.

I grant the Landlord a monetary order in the amount of \$2,942.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Tenant failed to pay the rent owing under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2022, and the Tenant did not have a legal right under the Act to withhold payment of the rent.

The Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2022, is dismissed.

The Landlord is granted an order of possession for the rental unit effective two (2) days after service on the Tenant and a monetary order for unpaid rent and the cost of the filing fee in the amount of \$2,942.00

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: March 20, 2023

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Residential Tenancy Branch