



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, LRE

### Introduction

On February 8, 2023, the Tenant made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 4, 2023.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. 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 were informed that recording the hearing is not allowed.

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.

### Issues to be Decided.

- Should the 10 Day Notice dated February 4, 2023, be cancelled?
- Is the Landlord entitled to an order of possession for the rental unit and a monetary order for unpaid rent?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on July 6, 2022 . Rent in the amount of \$3,200.00 is due to be paid to the Landlord by the first day of the month.

The Landlord testified that the Tenant failed to pay the rent owing under the tenancy agreement for the months of December 2022, January, February and March 2023.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 4, 2023, ("the 10 Day Notice"). The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$8,600.00 which was due on February 1, 2023. The effective date of the 10 Day Notice is February 14, 2023. The Tenant provided a copy of the 10 Day Notice.

The 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 disputed the 10 Day Notice on February 8, 2023, within the required time period.

The Landlord testified that the Tenant did not pay the rent due under the tenancy agreement within 5 days of her receiving the 10 Day Notice. The Landlord testified that the Tenant paid the Landlord \$1,000.00 towards unpaid rent on January 30, 2022. The Landlord testified that the Tenant owes rent arrears of \$11,800.00 up to and including rent owing for March 2023.

The Landlord wishes to end the tenancy and is seeking an order of possession for the rental unit and a monetary order for \$11,800.00 in unpaid rent.

In reply, the Tenant testified that he received the 10 Day Notice on February 4, 2023. The Tenant testified that she did not pay all the rent owing under the tenancy agreement within 5 days of receiving the 10 Day Notice. She confirmed that she paid \$1,000.00 to the Landlord on January 30, 2023, and acknowledged that she did not pay any other amount of rent owing under the tenancy agreement.

The Tenant stated that the rent was not paid because he did not have the funds, rather than any legal reason to withhold payment of rent. The Tenant does not dispute the Landlord's claim that she owes \$11,800.00 in 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.

Section 46 of the Act provides if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Section 55 of the Act provides if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy regarding non payment of rent, and the director dismisses the tenant's application or upholds the landlord's notice; the director must grant to the landlord an order of possession of the rental unit and an order requiring the payment of the unpaid rent.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant failed to pay the rent due under the tenancy agreement within five days of receiving the 10 Day Notice.

I find that the Tenant did not have a legal right under the Act to withhold payment of the rent. I find that the Tenant has breached the Act and fundamentally breached the tenancy agreement. In accordance with section 68(2) of the Act, I find that the tenancy has ended effective the date of this hearing.

I dismiss the Tenant's application to cancel the 10 Day Notice dated February 4, 2023. 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 2 (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 that the Tenant owes the Landlord unpaid rent in the amount of \$11,800.00. I grant the Landlord a monetary order for \$11,800.00.

### Conclusion

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

The tenancy has ended. The Landlord is granted an order of possession effective two (2) days after service on the Tenant and the Landlord is granted a monetary order for unpaid rent in the amount of \$11,800.00.

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 27, 2023

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Residential Tenancy Branch