



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR

### Introduction

On March 2, 2023, the tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the "Act").

The landlord attended the hearing. No one dialled in on behalf of the tenant during the hearing, which lasted from 1 P.M. to 1:26 P.M.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

### Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began September 21, 2018. Rent is \$1,015.00 due on the first day of the month. The landlord currently retains a \$500.00 security deposit.

The landlord served the Notice on February 21, 2023 to the tenant in person, who was there to receive it. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$1015.00 that was due on February 1, 2023.

The landlord affirmed that the tenant failed to pay rent in the amount of \$1015.00 that was due on February 1, 2023 and only paid back the rental arrears on March 9, 2023. The landlord further affirmed that there are no rental arrears currently outstanding.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

When a *10 Day Notice to End Tenancy for Unpaid Rent* is received by a tenant, that tenant must, within 5 days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. If the tenant fails to do so, the tenant is conclusively presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the relevant notice.

The tenant received the Notice in person on February 21, 2023. The tenant, however, only disputed the Notice on March 2, 2023 and paid the overdue rent on March 9, 2023, which is more than 5 days after the tenant received the Notice. Accordingly, I find that the tenant is conclusively presumed to have accepted the end of the tenancy.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant.

### Conclusion

The application is dismissed without leave to reapply. The landlord is awarded an order of possession.

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: April 11, 2023

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Residential Tenancy Branch