



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR,

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on March 13, 2023.

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

The parties confirmed receipt of evidence submissions in relation to this file

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenant testified that they were engaged to be married with the previous landlord, and they had lived together and when they separated they moved into the rental unit which was owned by their ex-partner. The tenant stated that rent was \$700.00 per month, due on the 12<sup>th</sup> day of each month and they paid a security deposit of \$400.00.

The tenant testified that the agreement with the previous landlord was that they would not pay rent for the first year as compensation for work they had previously done while

in their relationship as the value of work far exceeded the rent owed for one year. The tenant stated that the rent was never \$1,600.00 and this amount far exceeded their monthly income.

The landlord's testified that they took possession of the property on February 24, 2023, and the seller in the purchase and sales contract confirmed that the rent was \$1,600.00 per month.

The landlords stated that it appear the seller gave fraudulent information as the previous landlord has filed an application for dispute resolution against the tenant claiming unpaid rent in the amount of \$700.00 per month and \$1,400.00 for the month of February 2023. The landlords stated that they only found out about this other hearing through the tenant's evidence. I have noted the file number on the covering page of the decision.

The landlord's testified that if even if the tenant's rent was \$700.00 per month the tenant should have been paying that amount; however, they have not received any rent from the tenant for March, April and May 2023.

The landlord's testified that the tenant was also served with a Two Month Notice to End Tenancy for Landlord's Use of Property, which is the subject of another hearing.

### Analysis

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

I accept the evidence of the tenant that rent was \$700.00 per month as that is what the previous landlord is claiming in their application for dispute resolution. I find it highly unlikely that the tenant agreed that the rent was increase to \$1,400.00 for the month of February 2023 and then would increase again to \$1,600.00 when the new purchaser, the current landlord took possession of the rental unit. I find it more likely than not the that the seller provided false information to the buyer. The buyer in this case, may have legal recourse against the seller which is outside my jurisdiction. A copy of this decision can be use as evidence at any future hearing.

However, I am not satisfied that the tenant was to live rent free due to work they had done while in this relationship and living with the seller. The tenant moved from their

partner's home into the rental unit, the previous landlord, and rent was established in the amount of \$700.00 per month and no value of the work was established.

Further, this is not supported by the written details of the tenant's application as they wrote rent was prepaid for the entire year. Rather, I would expect to see in the details that the tenant had an agreement with the previous landlord, their ex-partner, not to pay any rent for work they performed. Nothing of this mentioned in the details of dispute and no value of the work was agreed upon. I find this is more likely than not that the tenant simply felt they are entitled to withhold rent. While the tenant may have legal rights, against their previous partner depending on how long they lived together that is outside my jurisdiction and the tenant may want to seek legal advice.

In this matter, the Notice indicates \$1,600.00 was due and owing; which is not correct only because of the false information provided by the seller; however, I am satisfied that the tenant failed to pay rent of \$700.00 due to the landlords.

Therefore, I find the Notice is valid and remains in full force and effect. I dismiss the tenant's application without leave to reapply. I find the tenancy legally has ended on the effective date of the Notice, March 24, 2023, I find the tenant is overholding the rental unit. The landlord may want to provide a copy of this decision for any future hearing as evidence that the tenancy has ended based on section 46 of the Act and not section 49 of the Act.

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.

As the tenant has not paid any rent for March, April and May 2023, I find that the landlords are entitled to a monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act in the amount of **\$2,100.00**.

I order that the landlords retain the security deposit of **\$400.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,700.00**. This 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's application is dismissed. The landlord is granted 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: May 10, 2023

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Residential Tenancy Branch