



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **CNR, PSF, LRE, LAT, OLC**

### **Introduction**

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant('s') application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on April 4, 2023;
2. To have the landlord provided services, or facilities;
3. To suspend or set conditions on the landlord's right to enter the rental unit; and
4. 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.

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 tenancy began on June 1, 2022. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$800.00 was paid by the tenant.

The tenant testified that they received the Notice on April 5, 2023. The tenant stated that the rent was not paid at the time the Notice was issued, but it was paid by April 8, 2023.

The tenant testified that the April 19, 2023, payment was for May 2023 rent and the payment made on May 17, 2023, was for June rent.

Filed in evidence are copies of rent payments sent to the landlord that was auto deposited into their account. The last payment before April 2023 rent was due was on March 2023, rent which was paid on March 6, 2023.

Filed in evidence the tenant has submitted an auto deposit sent on April 19, 2023, to the landlord which in the message details says for May 2023. The tenant has ,provided no proof that any other payment were received by the landlord that related to April 2023, rent.

The landlord testified that the tenant did not pay rent for April 2023, within 5 days. The landlord stated that they receive rent for April on April 19, 2023. The landlord stated they did not receive an etransfer on April 8, 2023, and the payment on the 19<sup>th</sup> was applied to April 2023, rent.

The landlord testified that the etransfer they received on May 17, 2023, was applied to May 2023, rent

Filed in evidence are copies of etranfers shown sent by the tenant, and are the same as the tenant's evidence, although I note the etransfer for April 19, 2023, indicates for May 2023 and the May 17, 2023, shows it was for June 2023.

### Analysis

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

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*.

...

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.

In this case, both parties have provided copies of the auto etransfers, which they are identical. While the tenant indicated they paid the rent for April on April 8, 2023. However, there is no evidence to support that payment. Which I find problematic when they have provided every other payment sent to the landlord by etransfer, except for this one payment, which is the issue before me.

Further, there is no submission in the tenant's application that states they paid the rent on April 8, 2023, and their application was filed on April 9, 2023. The tenant submission relate to complaints regarding the tenancy.

The only payment showing any money being paid in April was on April 19, 2023, which the tenant indicated it was for May 2023; however, the landlord applied that rent to April 2023, as they did not receive any other payments, which I find is reasonable.

I find the tenant has failed to prove rent for April 2023, was paid within 5 days of receiving the Notice as the only evidence, is a payment dated April 19, 2023, which is outside the statutory time limit. I find the Notice is valid and remains in full force and effect. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, 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) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy 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.

As rent for April and May 2023 have been paid, I find I do not need to consider section 55(1.1) of the Act. As I have ended the tenancy the balance of the tenant's application is dismissed without leave as they are related to the tenancy continuing.

### 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 26, 2023

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Residential Tenancy Branch