



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, RR, FFT

### Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s February 22, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the Act;
- (ii) an order to reduce rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act; and
- (iii) authorisation to recover the cost of the filing fee under section 72 of the Act.

### Preliminary Issue - Unrelated Claims

*Rules of Procedure* 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the tenant’s claim regarding the Notice is not sufficiently related to the tenant’s other claim to warrant that they be heard together. I exercise my discretion to dismiss the tenant’s other claim with leave to reapply and will deal only with the Notice.

### Issues

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

### 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 March 22, 2022. Rent is \$1,600.00 due on the first day of the month.

The landlord served the Notice on February 16, 2023, by delivering to the tenant in person. The tenant confirmed that the tenant received the Notice on February 16, 2023. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$1,600.00 that was due on February 1, 2023. All pages of the Notice were served and submitted into evidence. The tenant applied to dispute the Notice on February 22, 2023.

The landlord affirmed that the tenant has not paid rent from February 2023 to the present. Currently, there is 5 months of rent in arrears.

The tenant affirmed that:

- the tenant applied late to dispute the Notice as the tenant thought the 5-day deadline referred to business days rather than regular days. The tenant was not aware the tenant was late.
- the tenant has not paid rent as the tenant was unable to get a hold of the landlord.
- the landlord had waived February 2023's rent and submitted evidence of a text message between the landlord and the tenant.

### Analysis

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 46(1) of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day rent remains unpaid after the day rent is due.

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 16, 2023. Therefore, the tenant had to dispute the Notice by February 21, 2023. The tenant, however, only disputed the Notice on February 22, 2023, which is after the 5 days deadline. The tenant also did not provide a valid reason for requesting more time to dispute the Notice under the Act. Accordingly, I find that the tenant is conclusively presumed to have accepted the end of the tenancy. Therefore, the tenant's application to cancel the Notice is dismissed.

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.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act.

In relation to unpaid rent, the landlord's evidence is that the tenant has not paid rent from February 2023 to the present. Currently, there is 5 months of rent in arrears amounting to \$8,000.00 in total.

In relation to unpaid rent, the tenant's evidence is that:

- the tenant has not paid rent as the tenant was unable to get a hold of the landlord.
- the landlord had waived February 2023's rent and submitted evidence of a text message between the landlord and the tenant.

Regarding waiving February 2023's rent, the tenant had submitted evidence of a text message between the landlord and the tenant where the landlord had stated that the landlord would waive February 2023's rent. However, the rest of the text from the landlord appeared to be in reference to an agreement for the tenant to leave the rental unit on March 1, 2023, which did not take place as the tenant is still occupying the rental unit. Therefore, I do not find that there was an agreement for the landlord to waive February 2023's rent. Thus, the tenant did not have a valid reason to withhold rent in February 2023.

Regarding rent from March 2023 to the present, the tenant's reason for not paying rent was because the tenant was unable to get a hold of the landlord. However, the tenant did not provide any documentary evidence showing that the tenant had attempted to

pay rent to the landlord but was unable to reach the landlord. As not being able to get a hold of the landlord is not a valid reason to withhold rent and the tenant did not provide any evidence of having attempted to pay rent to the landlord, I find that the tenant did not have a valid reason to withhold rent from March 2023 to the present.

Accordingly, the tenant is ordered to pay \$8,000.00 in unpaid rent to the landlord. A monetary order for the amount of \$8,000.00 is attached to this Decision and must be served on the tenant.

Since the tenant was not successful in its application, the tenant's application to recover the cost of the filing fee under section 72 of the Act is dismissed.

### Conclusion

The application is dismissed without leave to reapply. The landlord is awarded an order of possession and a monetary order for the amount of \$8,000.00.

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: June 15, 2023

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Residential Tenancy Branch