



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, OLC  
                             LAT, OLC  
                             CNC, OLC

### Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s May 10, 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; and
- (ii) an order for the landlord to comply with the Act under section 62 of the Act.

In addition, under section 58 of the Act, this hearing dealt with the tenant’s May 28, 2023, application to the Residential Tenancy Branch for:

- (i) authorization to change the locks to the rental unit under section 31 of the Act; and
- (ii) an order for the landlord to comply with the Act under section 62 of the Act.

In addition, under section 58 of the Act, this hearing dealt with the tenant’s May 17, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling a One Month Notice to End Tenancy for Cause pursuant to section 47 of the Act; and
- (ii) an order for the landlord to comply with the Act under section 62 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 claims to warrant that they be heard together. I exercise my discretion to dismiss the tenant's other claims 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?

### 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 October 1, 2022. Rent is \$1,500.00 due on the first day of the month. The landlord currently retains a \$750.00 security deposit and a \$250.00 pet damage deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on May 2, 2023, by leaving a copy in the mailbox of the rental unit. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$4,250.00 that was due on May 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that the tenant is currently \$5,000.00 in arrears, representing unpaid rent from December 2022 to the present.

The tenant affirmed that:

- the tenant has accumulated \$5,000.00 in unpaid rent.
- the tenant had withheld rent because from January 2023 to April 2023 the rental unit did not have any heat. Therefore, the tenant had to spend money to stay at hotels. The tenant believes the tenant is owed compensation for the months where heat was not available, which is why rent was withheld.

### 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.

The landlord's evidence shows that the tenant is currently \$5,000.00 in arrears, representing unpaid rent from December 2022 to the present. The tenant agrees that the tenant has accumulated \$5,000.00 in unpaid rent.

The tenant affirmed that rent was withheld because from January 2023 to April 2023 the rental unit did not have any heat. Therefore, the tenant had to spend money to stay at hotels. The tenant believes the tenant is owed compensation for the months where heat was not available, which is why rent was withheld.

As the justification provided by the tenant for withholding rent is not a valid reason for withholding rent under the Act, I find that the tenant is currently \$5,000.00 in arrears, representing unpaid rent from December 2022 to the present. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason. I also find that the Notice complies with the form and content requirements of section 52. As a result, 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. Therefore, the tenant is ordered to pay \$5,000.00 in unpaid rent to the landlord.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$750.00 security deposit and the \$250.00 pet damage deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$4,000.00 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 and a monetary order in the amount of \$4,000.00.

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: July 01, 2023

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Residential Tenancy Branch