



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, RR, RP, LRE

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord make repairs to the rental unit or property; and
- for an order limiting or setting conditions on the landlord's right to enter the rental unit.

The tenant and the landlord attended the hearing, however the landlord was represented at the hearing by an agent. The landlord's agent and the tenant each gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

The landlord has not provided any evidentiary material, and the landlord's agent agrees that the tenant's evidence has been received by the landlord. Therefore, all evidence of the tenant has been reviewed and is considered in this Decision.

At the commencement of the hearing I alerted the parties to the Rules of Procedure which indicate that multiple applications contained in a single application must be related, and I found that the primary application concerns a notice to end the tenancy, and I dismiss the balance of the tenant's application with leave to reapply.

### Issue(s) to be Decided

The issue remaining to be decided is: has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on February 1, 2022 and reverted to a month-to-month tenancy after February 1, 2023, and the tenant still resides in the rental unit. Rent in the amount \$1,600.00 is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$800.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite in the landlord's home, and the landlord also resides on the rental property. A tenancy agreement exists but a copy has not been provided for this hearing by either party.

The landlord's agent further testified that on March 2, 2024 the landlord's agent served the tenant with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities by handing all 3 pages of the Notice to the tenant personally. A copy of the first 2 pages of the 3-page Notice has been provided by the tenant for this hearing. It is dated March 2, 2024 and contains an effective date of vacancy of March 13, 2024 for unpaid rent in the amount of \$300.00 for February and \$1,600.00 for March, 2024, for a combined total of \$1,900.00.

The tenant paid \$150.00 on March 5, 2024 and another \$100.00 on March 20, 2024 which cleared up the arrears for February, 2024. The tenant also paid \$100.00 on March 25, 2024. However, no more rent has been paid for March or any for April, 2024 and the tenant is now in arrears of rent for March and April a total of \$3,100.00. The landlord did not give any receipts or anything in writing to indicate that any of the money received was accepted for use and occupancy only.

The tenant never pays on time, and the landlord has gone through the process of attempting to collect rent numerous times.

**The tenant** testified that the tenant has tried, and paid the landlord advising that rent would be late, and kept an open communication; the landlord knows why rent was late.

In March, the tenant paid the arrears for February, 2024. Eventually the landlord said to pay up-to-date and the parties could "take it from there."

The tenant is assisted by a government Ministry, who wanted the tenant to get something from the landlord to show that the tenant would still have a place to live. If the landlord had agreed, the Ministry would have paid the rent for March, 2024. The

Ministry tried calling the landlord as well. Copies of numerous e-transfers have been provided for this hearing, showing that the tenant is trying and is willing to pay. The tenant has the money to pay the outstanding rent, but doesn't want to give it to the landlord and still have to move out. The tenant was late because the tenant was hospitalized twice and the tenant's ex-partner took off and stopped paying, and the landlord is aware of that. The tenant has been paying every day or 2<sup>nd</sup> day and is communicating with the landlord.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*.

Also, if a landlord collects rent after the effective date of a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice), the landlord must give the tenant a receipt or some other notice in writing that the money is received for use and occupancy only and does not serve to reinstate the tenancy.

I have reviewed the Notice, which contains 2 pages only, provided by the tenant. The landlord's agent testified that 3 pages were served, but I don't have a copy of 3 pages.

The effective date of vacancy contained in the Notice is March 13, 2024, and the landlord's agent testified that the landlord accepted rent payments on March 20 and March 25, 2024, without providing the tenant with any written material indicating that the money was being received for use and occupancy only, or that the acceptance of the rent money does not serve to reinstate the tenancy. Therefore, I cancel the Notice and the tenancy continues until it has ended in accordance with the law.

The tenant is reminded that rent must be received by the landlord when it is due.

### Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated March 2, 2024 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

The balance of the tenant's application is hereby dismissed, with leave to reapply.

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 09, 2024

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Residential Tenancy Branch