



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding EMV HOLDINGS CORP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDCT, OLC, FFT

### Introduction

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

- an order cancelling a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing, and the landlord was accompanied by Legal Counsel, who requested that the tenant's application be amended to name the landlord as the landlord company as it appears in the tenancy agreement and in a notice to end the tenancy. The tenant did not oppose the amendment, and I amended the application accordingly. The frontal page of this Decision reflects that amendment.

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 is for an order cancelling a notice to end the tenancy, and the hearing focused on that.

The landlord's agent and the tenant each gave affirmed testimony, and the landlord called 1 witness who also gave affirmed testimony. The parties, or Legal Counsel were given the opportunity to question each other and the witness, and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence and testimony I find relevant to the notice to end the tenancy is considered in this Decision.

Issue(s) to be Decided

- 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*?
- Should the tenant recover the filing fee from the landlord?

Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on June 1, 2022 and reverted to a month-to-month tenancy after May 31, 2023 and the tenant still resides in the rental unit. Rent in the amount of \$1,470.00 was payable on the 1<sup>st</sup> day of each month, which has been increased over time and is now \$1,551.85 per month. On May 5, 2022 the landlord collected a security deposit from the tenant in the amount of \$735.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment suite, and a copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that the tenant is currently in arrears of rent the sum of \$126.85 in addition to late fees, for the month of August, 2024, and he directed the building manager to serve a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities to the tenant, which is the regular procedure.

**The landlord's witness** is the building manager, who started that employment on July 4, 2024. The witness testified that on August 20, 2024 at about 8:50 p.m. the witness went to the rental unit, knocked on the door and received no answer. The witness did not speak to the tenant, but attached a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice) to the door. A copy of pages 1 and 2 only of a 3-page Notice has been provided for this hearing by the landlord and by the tenant. It is dated August 20, 2024 and contains an effective date of vacancy of August 31, 2024 for unpaid rent in the amount of \$126.85 that was due on August 1, 2024. The witness testified that it is signed by the witness. The witness received communication from head office that an outstanding payment was not made by the tenant and the witness was directed to serve the Notice at that point. All pages were served none were omitted, and the witness believes there were 3 pages.

**The tenant** testified that there are procedural errors in communication, and the Notice is retaliatory due to an ongoing dispute with the landlord and the tenant's right to quiet enjoyment. The parties had attended a previous hearing with the Residential Tenancy Branch, and the tenant received a lot of negative and retaliatory communication from the building manager and head office, who were harassing the tenant and trying to

remove money from the tenant's account. The tenant was overwhelmed by constant eviction threats and every month there was something new. The landlord didn't communicate with the tenant in accordance with a previous order, and the tenant was willing to pay the rent.

Rent is usually paid right out of the tenant's bank account automatically each month. However, in August, 2024 the tenant had to pay in cash, and went to the landlord's head office. The tenant said that the tenant had a limited amount that the tenant could withdraw, and the landlord's agents said they would email the balance due including late fees. However, the landlord was going to charge the late fees twice, and the building manager was to be in touch with the tenant. However, the landlord didn't send an email to the tenant, but just served the Notice.

The tenant emailed the landlord saying that the tenant had the money. The tenant put the balance due in trust into an Escrow Trust Account and notified the landlord by email. The tenant was willing, ready and able to pay, but didn't pay the landlord directly because the landlord failed to communicate with the tenant. The rent was not withheld, and the tenant testified that if an account is held in trust, it shows that the money is there. The tenant also paid rent for the following month in full.

#### SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The tenant is required to pay rent on time, and it was not paid on time. The tenant had no legal right to withhold rent.

#### SUBMISSIONS OF THE TENANT:

The tenant has tried to follow procedures, and works with contracts all the time. There are errors in the landlord's paperwork, and the landlord has refused to have any discussion about it.

#### 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*.

The *Act* also states that:

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, the tenant testified that the overdue amount was placed in an Escrow Trust Account, which I am not satisfied complies with Section 26.

The *Act* also requires a landlord to serve a notice to end a tenancy in the approved form. A 10 Day Notice to End Tenancy For Unpaid Rent or Utilities is a 3-page form, and neither party has provided more than the first 2 pages. The onus is on the landlord to prove that the Notice was issued in accordance with the *Act*, and although the landlord's witness testified that he believed 3 pages were served, in the absence of a full copy of the Notice, I cannot be satisfied what was on the 3<sup>rd</sup> page, or that it was given in the approved form.

Therefore, I cancel the Notice and the tenancy continues until it has ended in accordance with the law.

Since the tenant has been partially successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlord, which I order will be applied to the overdue amount of rent.

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

### Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated August 20, 2024 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby order that the tenant recover the \$100.00 filing fee by the landlord applying that amount to the unpaid rent.

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: September 19, 2024

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Residential Tenancy Branch