



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR OLC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

The tenant attended the hearing, gave affirmed testimony, and provided copious amounts of evidence prior to the commencement of the hearing. The tenant was also accompanied by an Advocate, who observed only and did not take part in the hearing. The landlord also attended the hearing, with a support person who observed only, and the landlord was mostly represented at the hearing by her son who also gave affirmed testimony. The parties were given the opportunity to question each other.

A lot of the tenant's evidentiary material was provided to the Residential Tenancy Branch 1 or 2 days prior to the hearing, which is contrary to the Rules of Procedure. Only the evidence provided at least 14 days before the hearing date, and only evidence that I find relevant to the application has been reviewed and 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*?
- Has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement?

### Background and Evidence

**The landlord's agent** testified that he is the landlord's son and is aware of some of the issues with respect to this tenancy, but does not know when this month-to-month tenancy began, however the tenant still resides on the rental property. The tenant has subleased the house and moved into a bachelor suite in the garage about 3 years ago, with the oral consent of the landlord. No rent was charged for the bachelor suite in the garage.

Rent in the amount of \$900.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy, on October 25, 2012 the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenant failed to pay rent when it was due for October and for November, 2019 and the landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 17, 2019 by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated November 17, 2019 and contains an effective date of vacancy of December 12, 2019 for unpaid rent in the amount of \$1,800.00 that was due on "1 10.11 2019," which the landlord's agent testified means rent that was due on October 1 and November 1, 2019.

The tenant didn't pay the rent and on December 5, 2019 the landlord caused the tenant to be served with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a copy has been provided for this hearing. It is dated December 3, 2019 and contains an effective date of vacancy of December 15, 2019 for unpaid rent in the amount of \$2,700.00 that was due on December 1, 2019.

The tenant has not paid any rent since either Notice was issued, but in December, 2019 and January, 2020 the tenant offered rent, however the Residential Tenancy Branch advised that if rent was accepted it would void the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. At that point the rent was already 2 months late.

The landlord's agent further testified that having reviewed the evidence provided by the tenant, the tenant claims that rent was exchanged for work that the tenant completed for the landlord. However, the landlord has paid the tenant for some of the work, and none of the things claimed by the tenant were authorized by the landlord. When the landlord and agent received the claims, they were "blown out of the water," and had no clue of any work, and some of the claims go back 3 years.

About a year ago the tenant talked about buying the property but the tenant couldn't get financing and then wanted the landlord to subdivide. The landlord refused to do so.

**The landlord** testified that the first payment of rent was on November 25, 2012 along with the security deposit. The landlord has not authorized the work in exchange for rent. No attempt was made to pay rent after the first 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued.

**The tenant** testified that he moved in on December 1, 2011 and paid rent in services, authorized by the landlord over the phone and in person at the end of July for paint, and for furnace repair at the end of August. The tenant paid for supplies from a hardware store and Walmart, and withheld the amounts from rent which he was always authorized to do by the landlord.

The tenant referred to Residential Tenancy Policy Guideline 27 with respect to transferring ownership. The tenant provided a quote to the landlord for a wall and landscaping, and did the work at a value higher than what the landlord is seeking. Therefore, the Residential Tenancy Branch has no jurisdiction, and a Builders' Lien will be filed by the tenant's lawyer tomorrow.

The tenant also testified that the landlord's spouse, who has Alzheimer's told the tenant he could stay forever. The tenant refers to the *Residential Tenancy Act* which states that the Residential Tenancy Branch has no jurisdiction because the tenancy is for 20 years or more.

The tenant believes he is current in rent. He arranged to have the furnace repaired after the landlord told him to take care of it. The tenant was getting \$20.00 per hour except for technical work, which is \$35.00 per hour. The tenant claims that the Notice to end the tenancy is in retaliation for other issues that have nothing to do with this tenancy.

The tenant also testified that on November 20 and 21 the landlord and the landlord's agent approached the sub-tenants about paying the landlord rent directly and they moved out. As a result, the tenant lost \$1,000.00. They didn't feel safe and moved out on December 5, 2019. The sub-tenant was paying \$550.00 on the 1<sup>st</sup> of each month.

No receipts were given for rent paid in cash, contrary to the law and the principle of Estoppel. Established arrangements were condoned by the landlord which arrangement has been going on for years. The landlord refused to accept rent after the second Notice to end the tenancy was issued.

### Analysis

Firstly, the tenant has raised some jurisdictional issues. The *Residential Tenancy Act* does not apply to: *Section 4(i)* living accommodation rented under a tenancy agreement that has a term longer than 20 years. In this case, the tenant testified that the landlord told him he could live there for the rest of his life. That does not qualify as a tenancy agreement that has a term of longer than 20 years. If a written tenancy agreement has a term of longer than 20 years, the *Act* would not apply. However, there is no written tenancy agreement, and I accept jurisdiction.

The tenant also referred to Residential Tenancy Policy Guideline #27 – Jurisdiction, and the portion that deals with “Transfer of an Ownership Interest.” It speaks of a relationship of a seller and purchaser, which may cause the Residential Branch to decline jurisdiction. However, the landlord’s agent testified that the tenant talked about purchasing but couldn’t get the financing.

The *Act* also specifies that standard terms are terms of every tenancy agreement, whether or not the agreement is in writing. The fact of this case is that a tenancy agreement exists by virtue of the landlord collecting rent, a security deposit and is on a month-to-month basis.

The Policy Guideline also specifies that if the dispute is linked substantially to a Supreme Court action, the Residential Tenancy Branch may decline jurisdiction. The tenant testified that his lawyer will be filing a Builders’ Lien “tomorrow.” This matter is not currently before the Supreme Court, and again, I accept jurisdiction.

The tenant admits that he has not paid the rent and testified that he has always been permitted to pay the rent in services. Such agreements are hard to prove, and the landlord and landlord’s agent disagree that there was any authorization to fail to pay rent and provide services instead for October and November, 2019 rent.

A landlord must not ever refuse rent that is legally owed to the landlord. If a landlord accepts rent after the effective date of a notice to end a tenancy, the landlord may be found to have reinstated the tenancy *unless* the landlord gives the tenant a receipt with a notation indicating that the money is being received “For Use and Occupancy Only,” meaning that the acceptance of rent money owed does not serve the reinstate the tenancy. In this case, the parties agree that the tenant made no attempt to pay any rent until after the issuance of the second Notice to end the tenancy.

The tenant’s application is dismissed in its entirety.

The *Residential Tenancy Act* also states that where I dismiss a tenant’s application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of

Possession in favour of the landlord, so long as the Notice given is in the approved form. I have reviewed both Notices to end the tenancy and I find that they are in the approved form and contain information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: January 20, 2020

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Residential Tenancy Branch