



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant and four agents for the Landlord (the “Agents”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Agents agreed that they were served with the Application and the Notice of hearing and all parties agreed that the documentary evidence before me for review was exchanged.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the Tenant, a copy of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application. At the request of the Agent, a copy of the decision and any orders issued in their favor will be mailed to the mailing address for the Landlord listed in the Application.

### Preliminary Matters

#### **Preliminary Matter #1**

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

### **Preliminary Matter #2**

During the hearing there was confusion on behalf of the Agents regarding whether this hearing related to a One Month Notice to End Tenancy for Cause (a “One Month Notice”) due to repeated late payment of rent, or a 10 Day Notice. I confirmed that this hearing related to a 10 Day Notice for unpaid January 2020 rent, and the hearing proceeded based only on the 10 Day Notice and the issue of January 2020 rent.

### **Preliminary Matter #3**

During the hearing the Agents acknowledged incorrectly refusing late rent for January 2020, as well as subsequent rent payments for February and March of 2020. The Agents stated that the rent was refused due to a misunderstanding of the *Act* and the impact that accepting the rent would have on the tenancy, this hearing, and any notices to end tenancy issued at that time. The parties were advised about their rights and obligations in relation to the payment and acceptance of rent.

The Tenant acknowledged that rent was owed for January, February, and March of 2020 and agreed to pay the rent. The Agents agreed to accept the rent and to issue rent receipts for it in accordance with the *Act*. The Agents also agreed not to pursue a One Month Notice for repeated late payment of rent in relation to January, February, or March of 2020.

The parties should be aware that the Landlord remains at liberty to serve a One Month Notice for repeated late payment of rent in relation to any other months not listed above, in compliance with the *Act* and Residential Tenancy Branch Policy Guideline (the “Policy Guideline”) #38.

### **Issue(s) to be Decided**

Is there a valid reason to cancel the 10 Day Notice?

If the 10 Day Notice is not cancelled, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The parties agreed that the month-to-month tenancy began on November 18, 2016, and that rent is \$502.00 per month. Although the Tenant initially agreed that rent was due on the first day of the month, they later stated that this was an error, that the tenancy agreement is unclear as to when rent is due, and that they have paid rent at different times during different periods of the tenancy. The Agents disagreed stating that rent has always been due on the first of the month. In any event, the parties agreed that January rent in the amount of \$502.00 was due on January 1, 2020, and that moving forward, rent is due on the first day of each month.

The Agents stated that the timely payment of rent has been an ongoing issue and that when the Tenant did not pay rent on January 1, 2020, as required, a 10 Day Notice was personally served on the Tenant the following day, January 2, 2020. In the hearing the Tenant confirmed personal receipt of the 10 Day Notice on January 2, 2020.

The 10 Day Notice in the documentary evidence before me is signed and dated January 2, 2020, has an effective vacancy date of January 13, 2020, and states that the reason for ending the tenancy is because the Tenant failed to pay \$502.00 in rent as required on January 1, 2020.

The Tenant stated that on January 6, 2020, they attempted to pay the rent in full and the rent was refused by an agent for the Landlord. In support of this testimony the Tenant provided a video of the interaction. The Agents acknowledged that they erred by refusing to accept the rent on January 6, 2020, due to a misunderstanding of the *Act* and confusion over the type of notice to end tenancy served and the impact accepting the rent would have on this hearing, the tenancy and any notices to end tenancy already issued. All parties agreed that rent for February and March has also been refused by the Landlord due to this same misunderstanding.

The Tenant agreed to pay the rent for January, February, and March of 2020, and the Agents agreed to accept it and provide receipts in accordance with the *Act*.

### Analysis

Based on the documentary evidence and testimony before me for review, I am satisfied that rent in the amount of \$502.00 was due at the time the 10 Day Notice was served,

and that the Tenant personally received the 10 Day Notice on January 2, 2020. I am also satisfied that the Tenant attempted to pay the \$502.00 outstanding rent amount listed on the 10 Day Notice on January 6, 2020, which is within 5 days of receiving the 10 Day Notice, and that payment of rent was unreasonably refused.

Section 46 (4) of the *Act* states that if a tenant who has received a 10 Day Notice pursuant to section 46 of the *Act* pays the overdue rent within 5 days after receiving the notice, the notice has no effect. Although all parties agreed that rent remains outstanding for January 2020, as well as February and March of 2020, the Agents agreed that the Tenant attempted to pay the outstanding January rent on January 6, 2020, and that it was refused.

I am not satisfied that the Landlord or Agents had any right under the *Act* to refuse the Tenant's rent on January 6, 2020, and I find that the Tenant had the right to pay the rent pursuant to section 46 (4) of the *Act* until 11:59 P.M. on January 6, 2020. I therefore find that the 10 Day Notice dated January 2, 2020, is of no force or effect and I order that it is cancelled. As a result, I also order that the tenancy continue in full force and effect until it is ended by either party in accordance with the *Act*.

### Conclusion

I Order that the 10 Day Notice dated January 2, 2020, is cancelled and of no force or effect.

I Order that the tenancy continue in full force and effect until it is ended by either party in accordance with the *Act*.

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: March 5, 2020

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Residential Tenancy Branch