



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR

### Introduction

The tenant applied on January 18, 2023 for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”).

### 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 April 1, 2016. Rent is \$2,971.31 due on the first day of the month. The landlord currently retains a \$1,400.00 security deposit and a \$1,400.00 pet damage deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on January 16, 2023 by email to the tenant, who acknowledged receiving it. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$13,733.01 that was due on January 10, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that the tenant has been paying the rent on time recently and the issue of this dispute is regarding rental arrears from 2017 (there was around 6 months

worth of rental arrears). The landlord affirmed that the tenant and landlord agreed to a repayment plan in August 2021 where the tenant had to pay a minimum of \$500.00 every month on top of the rent in order to pay back the rental arrears. The landlord further affirmed that, while the tenant has been able to pay rent, the tenant has missed the \$500.00 rental arrears repayment in December 2021, October 2022 and December 2022. The landlord affirmed that the tenant currently has rental arrears of \$12,233.01.

The tenant affirmed that the landlord and the tenant agreed to the repayment plan. The tenant also affirmed that the tenant has missed the \$500.00 rental arrears repayment in December 2021, October 2022 and December 2022. The tenant further affirmed that the tenant currently has rental arrears of \$12,233.01.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

The landlord's evidence shows that the tenant did not pay the agreed upon monthly rental arrears repayment in December 2021, October 2022 and December 2022. 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 \$12,233.01 in unpaid rent to the landlord.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$1,400.00 security deposit and \$1,400.00 pet damage deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$9,433.01 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 award in the amount of \$9,433.01.

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 13, 2023

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Residential Tenancy Branch