



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding PACIFIC QUORUM PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

The Tenant applied for dispute resolution (“Application”) and seeks 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”).

The Tenant and an Agent for the Landlord, M.L., attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlord on March 16, 2023 via registered mail. The Landlord confirmed receipt of the Materials on March 17, 2023. I find that pursuant to sections 89 and 90 of the Act that Tenant’s Materials were sufficiently served to the Landlord.

M.L. testified that the Landlord’s evidence was served on the Tenant on April 5, 2023 by attaching a copy to the door of the rental unit. The Tenant confirmed receipt of the Landlord’s evidence and that they had sufficient time to review it. I find that the Landlord’s evidence was served in accordance with the Act.

### Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed that the tenancy started on October 1, 2018 and that rent is \$1,485.00 per month due on the first day of the month. The Tenant paid a security deposit of \$700.00 and a pet damage deposit of \$700.00 which the Landlord still holds. A copy of the written tenancy agreement was entered into evidence by the Landlord. The Tenant still occupies the rental unit.

M.L. Testified that the Tenant did not pay rent due on March 1, 2023. The Tenant had informed M.L. by email that they would not be able to pay rent in full. The email from the Tenant explained that they would be able to pay half of the rent on March 1, 2023 and half by March 10 or 13, 2023. No payments were received and the Notice was served on March 9, 2023.

The Notice is dated March 9, 2023 and provides an effective date of March 21, 2023. The amount of outstanding rent stated on the Notice is \$1,777.00 which is made up of the monthly rent of \$1485.00 and a further \$292.00. M.L. stated they did not know what this additional amount of \$292.00 represents or where it originated from as a Property Manager who has since left the company drafted the Notice.

A payment of \$300.00 was made by the Tenant on March 17, 2023. The Tenant dropped off cheques for the amounts of \$935.00 and \$542.00 to the Landlord's office, though these were only discovered on March 31, 2023 as no one had been present to receive them.

The Tenant paid \$1,020.00 in cash, which was processed on April 4, 2023 for the rent due on April 1, 2023.

M.L. stated that as of April 1, 2023 the Tenant's rental arrears stood at \$173.00 and that the Landlord seeks an Order of Possession.

The Tenant testified that they had received a letter from the Landlord which provided M.L.'s email as the only method of contact. They contacted M.L. on March 1, 2023 when they were unable to pay rent looking to discuss a possible payment plan. They received an out-of-office notification and then received the Notice on March 9, 2023 and no other communication from the Landlord.

The Tenant stated that in addition to the cheques already provided to the Landlord, a further cheque for \$515.00 will be made out to the Landlord to cover rent for April 2023.

They stated that their employment situation had now changed and they would be able to pay rent on time from May 2023 onwards.

The Tenant stated the additional amount of \$292.00 on the Notice was not explained to them. They acknowledged they previously had rental arrears, but they had been cleared so they did not know where the additional amount came from.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

The Act sets out limited circumstances in which monies claimed by the tenant can be deducted from rent, which include when a tenant has paid a security or pet deposit above the allowed amount, reimbursement of costs incurred by the tenant for emergency repairs, when a landlord collects rent for a rent increase that does not comply with the *Residential Tenancy Regulation*, if the landlord gives authorization to not pay rent, or as ordered by the Director.

The Tenant put forward no evidence to indicate that any of the above circumstances are applicable, nor are any apparent to me. Therefore, I am satisfied that rent in the amount of \$1,4850.00 was due on March 1, 2023.

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.

Both the Landlord's evidence and the Tenant's own testimony show that the Tenant did not pay the rent on March 1, 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. Testimony from both parties indicates to me that the Tenant did not pay the outstanding rent within five days of receiving the Notice. Had this been done, the Notice would have had no effect, per section 46(4)(a) of the Act.

However, section 46(2) of the Act indicates that the Notice must comply with section 52 of the Act which confirms the form and content requirements of a notice to end tenancy. I find that there is an issue with the Notice, specifically that it does not comply with section 52(d) of the Act which confirms that a notice must state the grounds for ending the tenancy. In this case the grounds for ending the tenancy is unpaid rent, however the amount stated on the Notice exceeds the actual amount of outstanding rent.

During the hearing it was acknowledged by M.L. that the amount of outstanding rent on the Notice was not reflective of the correct amount and an additional amount of \$292.00 was included. Neither party had knowledge of where this amount originated.

Given this, I use my authority under section 62(2) of the Act and find that the Notice is defective and does not comply with section 52 of the Act.

Section 68(1) of the Act allows a Notice that does comply with section 52 to be amended. In this case I do not find it reasonable to do so as it would be overly prejudicial to the Tenant. As such, I set aside the Notice in accordance with section 68(2)(b) of the Act.

In light of the above, I grant the Tenant's Application and I order that the 10 Day Notice to End Tenancy for Unpaid Rent dated March 9, 2023 is canceled and the tenancy continues.

### Conclusion

**The Tenant's Application is granted and the tenancy continues.**

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 14, 2023

---

Residential Tenancy Branch