



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RP, ERP, OLC, RR, MNDC

### Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act ("Act"). The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), an order requiring the landlord to make repairs and emergency repairs to the rental unit, for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, for an order allowing a reduction in rent, and a monetary order for money owed or compensation for damage or loss.

The tenants attended the telephone conference call hearing; the landlord did not attend.

The tenant testified that she attempted to hand deliver the landlord their application package to the landlord on or about March 11, 2015, when he attended the rental unit, but that the landlord refused to accept the documents.

Based upon the submissions of the tenant, I accept that she constructively served the landlord with the application for dispute resolution and notice of hearing by attempted hand delivery as required by section 89(1) of the Act, when the landlord refused to accept the documents. The hearing proceeded in the landlord's absence as refusal of the documents do not amount to non-service.

The tenants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matters-*

Although the tenants had not originally applied seeking cancellation of the Notice as the Notice had not yet been served at the time of their application, the tenants made such a request and I have therefore allowed the tenants' amendment to seek cancellation of the Notice.

Additionally, the tenants were not able to provide sufficient evidence as to whether or not this dispute was under the Residential Tenancy Act or the Manufactured Home Park Tenancy Act, as the evidence was unclear. The tenant confirmed that she had additional documents to submit in order to assist in making that determination and the tenant was allowed to submit those documents by facsimile, with the proviso that the documents be received by the close of business on April 13, 2015. The tenants did so, and even though the documentary evidence still made unclear of the appropriate Act as the first page of a tenancy agreement was not submitted, I find that on a balance of probabilities that this dispute fell under the Residential Tenancy Act, as it appears the tenants rented a manufactured home from the landlord.

Additionally, I have determined that the portion of the tenants' application dealing with a request for orders for the landlord's compliance with the Act, for an order requiring the landlord to make repairs and emergency repairs, for a reduction in rent, and for monetary compensation are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenants' application and dismissed that portion of the tenants' request for those orders, **with leave to reapply**. I note that I was further influenced to sever the tenants' application due to the tenants' statement that any repair issues had been ongoing since the tenancy began.

The hearing proceeded only upon the tenants' application to cancel the Notice.

Issue(s) to be Decided

Are the tenants entitled to a cancellation of the Notice?

Background and Evidence

The tenants submitted that the tenancy began on August 31, 2013, and monthly rent is \$600.00.

Into evidence, the tenants submitted the Notice issued to them. The Notice was dated March 11, 2015, listed unpaid rent of \$600.00 owed as of March 1, 2015, and listed an

effective move-out date of March 21, 2015. The Notice informed the tenants that they had 5 days of service to pay the unpaid rent listed or file an application with the Residential Tenancy Branch ("RTB") in dispute of the Notice.

### Analysis

Under section 46 of the Act, a landlord may serve a tenant a 10 Day Notice to End Tenancy for Unpaid Rent if rent is unpaid on any day after the day it is due. When a landlord issues a notice to end a tenancy and the tenants file an application to dispute the notice within the required time frame, the landlord must prove and demonstrate that there is sufficient reason under the Act to end the tenancy.

As the landlord did not appear in the hearing to support their Notice, after being properly served with the tenants' application and notice of this hearing, I order that the Notice dated March 11, 2015, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

### Conclusion

The portion of the tenants' application seeking cancellation of the Notice is granted as I have cancelled the landlord's Notice, dated March 11, 2015.

The portion of the tenants' application seeking orders for the landlord's compliance with the Act, for an order requiring the landlord to make repairs and emergency repairs, for a reduction in rent, and for monetary compensation is severed, and the tenants are granted leave to reapply for those matters.

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 17, 2015

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Residential Tenancy Branch

