



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNR DRI FFT RP**

### Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- An order requiring the landlord to carry out repairs pursuant to section 33;
- An order to dispute a rental increase pursuant to section 43;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The lawyer MB attended for the landlord (“the landlord”). The tenants attended, and both provided affirmed evidence. Each party acknowledged receipt of the other party's evidence; each party had the opportunity to call witnesses and present affirmed testimony and written evidence. No issues of service were raised. I find the tenants served the landlord in accordance with section 89 of the *Act*.

### *Preliminary agreement*

The landlord agreed that the landlord will take all necessary steps within one month of

today's date to effectively eradicate all rodents in the unit.

Accordingly, the tenants withdrew their claim under section 43.

*Preliminary agreement # 2*

The landlord agreed that the tenants' rental is \$850.00 a month.

Accordingly, the tenants withdrew their claim under section 43.

Issue(s) to be Decided

Are the tenants entitled to the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") pursuant to section 46;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties agreed they entered in a month-to-month tenancy agreement beginning November 1, 2017 for \$850.00 monthly rent payable on the first of the month. No tenancy agreement was signed. At the beginning of the tenancy, the tenant provided a security deposit of \$450.00 to the landlord which the landlord holds.

The male tenant and the female tenant are husband and wife. Each provided affirmed testimony. They testified they always paid rent by cash to the landlord and have never received a receipt.

The tenants testified that commencing September 1, 2018, the landlord increased the rent from \$850.00 to \$950.00 monthly. They stated they did not realize that this rent increase was unlawful. They testified they have paid this amount in cash on or about the first of every month since this date, up to and including August 1, 2019.

The tenants testified that commencing in early 2019, the landlord asked the tenants to increase the rent to \$1,500.00 from \$950.00. The tenants stated they could not afford the rent increase and they continued paying \$950.00 a month.

The tenants testified that no rent is owing the landlord.

The tenants testified that the landlord served them with the Ten-Day Notice on July 6, 2019 claiming that \$950.00 was owing for rent due July 1, 2019. The tenants applied for dispute resolution on July 8, 2019 to cancel the Notice.

No copy of the Ten-Day Notice was submitted as evidence. The landlord did not provide an explanation for the tenants' account that the Notice stated rent in the amount of \$950.00 was not paid, and not \$850.00, the rental amount acknowledged by the landlord. In any event, the tenants testified no rent was owing.

The landlord provided an affidavit and testified that the rent was – and always has been - \$850.00 a month. The landlord testified that the tenants never paid more than the agreed upon rent of \$850.00. The landlord denied increasing the rent to \$950.00 or requesting a further increase to \$1,500.00. The landlord acknowledged that the tenants always paid rent in cash and that he never gave receipts, except on August 17, 2019 when he gave the tenants receipts for the months of January to June 2019 inclusive. The landlord submitted copies of the receipts. The landlord stated that this practice was not meant to be deceitful but that he did not know the law or practice in this regard.

The landlord submitted a copy of a text to the tenants stating that rent for the months of July and August 2019 had not been paid. No reply was submitted.

The landlord did not submit any receipts, ledgers, accounts, monetary worksheets, or any documentary evidence relating to financial matters between the parties.

The landlord requested an order of possession.

The tenants requested cancellation of the Ten-Day Notice.

### Analysis

While I have turned my mind to all the documentary evidence as well as the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the landlord's claims and my findings around each are set out below.

The hearing lasted 80 minutes and consisted of contradictory testimony regarding whether rent was paid by the tenants for the months of July and August 2019.

The tenants testified that, as usual, they paid the rent in cash for July and August 2019 and did not get a receipt. The landlord denied the tenants' version of events and stated that the tenants did not pay rent for July or August 2019.

Section 26(2) of the *Act* stipulates a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made.

When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has **not** been made.

When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment. The landlord's failure to provide receipts for cash payments made during a tenancy can significantly impair the landlord's ability to prove the tenant did not pay rent.

In this case, the landlord did not submit any evidence, such as a copy of a payment ledger, to corroborate the claim that the tenants did not pay \$850.00 for each of July and August 2019.

The landlord acknowledged receiving rent in cash each month since the start of the tenancy. The landlord further acknowledged not giving the tenants receipts until August 17, 2019, and then only for the months January 2019 to June 2019.

I have balanced the landlord's evidence with the tenants' evidence. I find, on a balance of probabilities, it is likely that the tenants' paid the rent for July and August 2019 without receiving a receipt. I find this to be consistent based on the parties' evidence of the nature of their financial relationship. I find the tenants' submissions to be reliable based on the history of the payment relationship, which the landlord acknowledged.

In weighing the evidence, I conclude the landlord has not met the burden of proving on a balance of probabilities that the rent remains owing as he testified.

Section 46 of the *Act* states as follows

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant **(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**  
**(b) must vacate the rental unit to which the notice relates by that date**  
(*emphasis added*)

The landlord has not submitted a copy of the Ten-Day Notice. Section 52 of the *Act* states to be effective, a notice to end a tenancy must be in writing and must be in the approved form. Without a copy of the Ten-Day Notice or evidence of its form and content, I am unable to determine if it complied with Section 52 of the *Act*.

In conclusion, I find the tenants' paid rent in cash for July and August 2019 and are not in arrears of rent. I therefore dismiss the Ten-Day Notice reportedly dated July 6, 2019 for outstanding rent of \$950.00 without leave to reapply.

I direct that the tenancy continues until it is ended in accordance with the tenancy agreement and with the *Act*.

#### *Filing Fee*

As the tenants have been successful in their application, I direct that the landlord reimburses the tenants for the filing fee. I direct that the tenants may deduct the amount of the filing fee, \$100.00, from rent on a one-time basis only in satisfaction of this award.

#### Conclusion

The Ten-Day Notice is cancelled. The tenancy between the parties continues until it is ended in accordance with the tenancy agreement and 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: August 26, 2019

---

Residential Tenancy Branch