



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, LRE, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46;
- an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and,
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

This matter was originally heard on June 7, 2019. On July 3, 2019 a review consideration was granted and this matter was scheduled herein for review hearing. Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The tenant acknowledged receipt of the landlord's Notice of Hearing. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary Issue: Severance of Portion of Tenant's Application

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Ten Day Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing in order to address the question of the validity of the Ten Day Notice.

The tenant's other claims are unrelated in that they do not pertain to facts relevant to the grounds for ending this tenancy as set out in the Ten Day Notice. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except for the cancellation of the Ten Day Notice.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's 10 Day Notice pursuant to section 46?

If not, is the landlord entitled to an order of possession entitled to section 55?

Background and Evidence

This application dealt with the tenant's application to cancel the landlord's Ten Day Notice which the tenant testified was issued served on April 26, 2019. The tenant testified that the Ten Day Notice stated unpaid rent of \$400.00 as of April 1, 2019. The tenant stated that he paid \$200.00 on April 1, 2019 and he paid the balance of the April 2019 rent within five days of receiving the Ten Day Notice. The tenant also claimed a deduction of \$200.00 from the April 2019 rent for emergency repairs he performed.

The landlord did not dispute the tenant's claim to have paid the April 2019. However, the landlord testified that the tenant has not paid any rent from May 2019 to the date of the hearing. The tenant testified that he has paid all rent owing to the landlord.

### Analysis

Pursuant to *Residential Tenancy Branch Rules of Procedure* ("RTB Rules"), Rule 6.6 states that the applicant, in this case the landlord, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the landlord to prove that, more likely than not, the facts occurred as claimed in order to prevail in their claim.

Based on the tenant's undisputed testimony that he paid the entire April 2019 rent within five days of being served with the Ten Day Notice, I find that the landlord has not provided sufficient evidence to establish cause to end this tenancy pursuant to section 46. The landlord has not refuted the tenant's testimony that the April 2019 rent was paid. Furthermore, it is not relevant to the determination herein of the validity of the April 2019 Ten Day Notice whether or not the tenant paid rent in May 2019 or thereafter.

Accordingly, I hereby grant the tenant's application to cancel the Ten Day Notice. This notice to end tenancy is of no force or effect. This tenancy shall continue until it ends pursuant to the Act.

### Conclusion

I hereby grant the tenant's application to cancel the Ten Day Notice. This notice to end tenancy is of no force or effect. This tenancy shall continue until it ends pursuant to the Act.

I hereby dismiss all the tenant's claims with leave to reapply except for the cancellation of the Ten Day Notice.

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 22, 2019

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Residential Tenancy Branch