



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes          CNR, PSF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlords and for an order requiring the landlord to provide services or facilities required by law and the tenancy agreement.

The listed parties attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the parties confirmed receipt of the other's evidence. Neither party raised any issues regarding service of the application or the evidence.

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

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

### *Procedural matters-*

#### *#1-*

During the course of the hearing, there was an extreme amount of background noise, which appeared when both the tenant and the landlords were speaking. The noises can be described as echoing, reverberating, and tapping noises. These noises also appeared when no party was speaking.

Both parties confirmed that they could hear me clearly.

I note that even though the noise continued throughout the hearing, I was able to complete the hearing, as I could ultimately hear from both sides.

#2-

During the course of the hearing, the tenant submitted that she had filed an amended application to include a monetary claim and for a reduction in monthly rent.

I reviewed the evidence before me during the hearing and was only able to view the tenant's amended application which did not contain any further request. The audit notes in the RTB system also reflected there was no amendment in the amended application. Further, the landlord submitted that they had not received those documents.

The tenant submitted that she filed evidence by way of a monetary order worksheet requesting compensation.

I informed the tenant that she could not add a claim through evidence; however, even if she had filed her amended application seeking monetary compensation, I would have declined to hear it, as it would be unrelated to the primary issue of disputing the Notice.

I note that after the hearing, I was able to view and determine that the tenant had in fact submitted an amended application seeking monetary compensation of \$950.00. This application was dated December 17, 2019.

As the tenant was informed at the hearing, I find any monetary claim of the tenant would be and is unrelated to the primary issue of disputing the Notice and seeking an order requiring the landlord to provide services or facilities required by law and the tenancy agreement.

As a result, pursuant to section 2.3 of the Rules, I severed the tenant's amended application and dismissed that portion, with leave to reapply.

I further note that the tenant in her amended application additionally mentioned a related claim and wrote that she lost the use of the recreational facilities. It was unclear if the tenant filed another claim, other than the monetary claim.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

Is the tenant entitled to an order requiring the landlord to provide services or facilities required by law and the tenancy agreement?

### Background and Evidence

The written tenancy agreement entered into evidence shows that this tenancy began on September 3, 2019, for a monthly rent of \$950.00 due on the 30<sup>th</sup> day of each month.

The parties submitted a copy of the Notice in question, both of which showed the first page of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a second page from a One Month Notice to End Tenancy for Cause.

The parties were informed that I did not require further information about the Notice in this hearing.

As to the tenant's request for an order requiring the landlord to provide services or facilities required by law and the tenancy agreement, the tenant submitted as follows:

- That she rented another rental unit from another landlord in this resort area for the winter months last year and had access to the resort's gym and sauna.
- That the landlord here failed to inform her that she was not being provided the same access to the resort's facilities this year for this tenancy.
- That the landlord should be required to provide her with access to the gym and sauna as part of her tenancy.

### *Landlord's response-*

The landlord submitted that there are no services or facilities that were provided to the tenant in the written tenancy agreement, which was provided into evidence.

### Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

#### *10 Day Notice issued by landlord –*

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

When a landlord seeks to end a tenancy for any of the reasons listed in this section of the Act, the landlord is required to serve a notice which complies with section 52 as to form and content of the notice to end the tenancy.

In the matter before me, I find the landlord failed to serve the tenant with a 10 Day Notice or even a One Month Notice in the required form. Each of these documents are separately two pages in length. The complete form must be served to the tenant, not one page from one Notice and the second page of another Notice, as in this case.

The Act requires that notices to end tenancy issued by the landlord be in the approved form due to the fact that the approved forms contain all of the required information a tenant would require to dispute the notice if necessary.

Therefore, I find the 10 Day Notice is not valid as it is missing necessary information contained on the second page.

As a result of the above, the 10 Day Notice dated November 11, 2019, for an effective move-out date of November 18, 2019, is cancelled and is of no force or effect.

I ORDER the tenancy to continue until ended in accordance with the Act.

*An order requiring the landlord to provide services or facilities-*

I have reviewed the written tenancy agreement provided into evidence and find it does not contain any provision with respect to giving access to the gym or sauna facilities of the resort property. The tenancy agreement specifically does not provide for recreation facilities.

Due to the above, I do not find the landlord has breached the Act or the tenancy agreement and I dismiss this part of the tenant's application.

Conclusion

The tenant's application seeking cancellation of the Notice is granted.

The portion of the tenant's application for an order requiring the landlord to provide services or facilities required by law and the tenancy agreement is dismissed.

The portion of the tenant's amended application seeking monetary compensation is dismissed, with leave to reapply, as I have found it was unrelated to the primary issue of disputing the 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: January 7, 2020

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Residential Tenancy Branch