



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR   OLC   FF

### Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution made on January 2, 2020 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 1, 2020 (the "10 Day Notice");
- an order that the Landlords comply with the *Act*, regulation, and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenants and M.H.L. attended the hearing at the appointed date and time and provided affirmed testimony. M.H.L. was assisted by K.L., a translator.

The Tenants testified that Landlords were served with the Notice of Dispute Resolution Hearing package and a subsequent documentary evidence package by registered mail. M.H.L. acknowledged receipt of both packages. In addition, M.H.L. testified the Tenants were served with the documentary evidence upon which the Landlords intend to rely in person. The Tenants acknowledged receipt. No issues were raised during the hearing concerning service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice?
2. Are the Tenants entitled to an order that the Landlords comply with the *Act*, regulation, and/or the tenancy agreement?
3. Are the Tenants entitled to an order granting recovery of the filing fee?

### Background and Evidence

The tenancy agreement submitted into evidence confirms the tenancy began on September 1, 2017. Although the amount of rent due is in dispute, the tenancy agreement indicates that rent is due in the amount of \$2,550.00 per month. The Tenants paid a security deposit of \$1,275.00 and a pet damage deposit of \$1,275.00, which the Landlords hold.

The Landlords wish to end the tenancy and issued the 10 Day Notice, which was served on the Tenants in person on January 2, 2020. The Application acknowledges receipt of the 10 Day Notice on that date. The 10 Day Notice indicates that rent in the amount of \$1,400.00 was not paid when due on January 1, 2020 and remains outstanding. M.H.L. also testified that rent was not paid in full on February 1 and March 1, 2020.

The Landlords relied on written submissions and the testimony of M.H.L. In written submissions, the Landlords assert that on November 6, 2018, B.M. sent the Landlords a request to reduce rent. Although the Landlords initially declined, the Landlords agreed to reduce rent by \$100.00 to \$2,450.00 per month on November 7, 2018. M.H.L. testified there was no formal agreement and that the reduction was intended to be a temporary arrangement for only two or three months. However, M.H.L. acknowledged the Landlords did not follow up as intended in part due to a family emergency. The written submissions provided by the Landlords indicate that it was not until May 2019 – six months after rent had been reduced – that she sought to reinstate rent at the original amount. The following month, the Landlords sent a text to the Tenants demanding that they pay the original amount of rent due under the tenancy agreement. In July 2019,

the Landlords issued a notice to end tenancy for unpaid rent or utilities. The Landlords testified the Tenants ripped it up and threw it in the garbage which was denied by the Tenants. The Landlords did not take steps to enforce the notice to end tenancy by making an application for dispute resolution.

The Landlords testified that the Tenants have continued to pay only \$2,450.00 per month. The Landlords seek to end the tenancy for the underpayment since December 1, 2018.

In reply, the Tenants testified that the Landlords agreed to the rent reduction and stated there was no suggestion by the Landlords that the reduction was temporary. In addition, the Tenants testified that there was no issue with rent until the Tenants filed an application for dispute resolution on or about June 16, 2019. The Tenants' claim was related to "excessively high electric utility statements" due to a malfunctioning hot water heater. The Landlords did not attend the hearing and the Tenants were granted monetary relief in the amount of \$689.13. The file number of the related hearing is reproduced above for ease of reference. In any event, the Tenants suggested it was the previous dispute resolution process that got the Landlords "fired up" about rent. The Tenants also referred to a text message from the Landlords, which appears to suggest that the Landlords would continue rent at the lower rate if the Tenants cancelled the previous dispute resolution hearing. The Tenants testified that M.H.L. advised them she would lie if the current hearing proceeded, which was denied by M.H.L. It was not disputed that the Landlords did not take formal steps to reinstate the original rent or increase rent until July 2019.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms tenant must pay rent when due whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. Section 46 of the *Act* permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due.

In this case, I find the 10 Day Notice was served on and received by the Tenants on January 2, 2020. I also find the Tenants disputed the 10 Day Notice on time in accordance with section 46(4) of the *Act*.

After careful consideration of the above, I find there is insufficient evidence before me to conclude that the rent reduction implemented on December 1, 2018 was intended to be temporary. The evidence adduced confirms that no steps were taken to increase rent until the Tenants commenced dispute resolution hearings related to an overpayment of utilities on or about June 16, 2019. I find it is more likely than not that the formal steps taken by the Landlords to increase rent in June and July 2019 were an effort to recoup the amount of the monetary award sought by and ultimately granted to the Tenants in a decision issued on September 30, 2019. I note that there is no evidence before me to suggest the Landlords made an application for dispute resolution to restore rent to the original amount or to end the tenancy based on the previous notice to end tenancy. As a result, I find that the Tenants have paid rent when due under the terms of the tenancy agreement which was modified in November 2018 and has been effective since December 1, 2018. I find that rent is due in the amount of \$2,450.00 per month, subject to increases permitted under the *Act*.

I find the 10 Day Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the *Act*. Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application. I order that \$100.00 may be deducted from a future rent payment at the Tenants' discretion.

### Conclusion

I order that the 10 Day Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with 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: March 5, 2020

---

Residential Tenancy Branch