



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice); and
- Recovery of the filing fee.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant S.L., an occupant R.M., and the Landlord, all of whom provided affirmed testimony. The Landlord acknowledged service of the Tenant's Application and the Notice of Hearing and raised no concerns regarding service or timelines. As a result, the hearing proceeded as scheduled. As the parties acknowledged service of each other's documentary evidence and raised no concerns regarding service, timelines, or the acceptance of the documentary evidence for my consideration, I accepted the documentary evidence before me from both parties. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

### Preliminary Matters

#### Preliminary Matter #1

Although both L.S. and R.M. are listed as applicants, there was general agreement between the parties at the hearing that R.M. was an occupant of the rental unit rather than a tenant, as they are not included in the tenancy agreement. As a result, I amended the application to reflect that only L.S. is a tenant and will name only L.S. as a tenant in any orders.

#### Preliminary Matter #2

The parties were in agreement that the tenancy has now ended, and that possession of the rental unit has been transferred to the Landlord, who currently resides there. Although the Tenant did not seek possession of the rental unit as they have moved out, they still sought to proceed with the Application as they wished to receive a decision that the 10 Day Notice was not valid and wanted recovery of the filing fee. The hearing therefore proceeded as scheduled.

#### Preliminary Matter #3

During the hearing the Tenant sought to include monetary claims in their Application, however, the Tenant acknowledged that no Amendment to an Application for Dispute Resolution had been filed with the Residential Tenancy Branch (the Branch) or served on the Landlord as required by the Act and the Rules of Procedure. The Landlord also wanted recovery of unpaid rent; however, no Application for Dispute Resolution had been filed by the Landlord seeking the recovery of unpaid rent.

Rule 6.2 of the Rules of Procedure states that the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. As no Application was filed by the Landlord seeking rent and no Amendment was filed by the Tenant seeking monetary compensation other than the filing fee, I find that the Application only relates to cancellation of the 10 Day Notice and recovery of the filing fee.

Although rule 4.2 of the Rules of Procedure allows arbitrators to amend Applications for Dispute Resolution at hearings without the need for service of an Amendment to the Application for Dispute Resolution, this is restricted to circumstances that can reasonably be anticipated. As I do not find that the Tenant's claim for compensation for monetary loss or other money owed or the Landlord's claim for recovery of unpaid rent could reasonably have been anticipated by the other party, I decline to amend the Application pursuant to rule 4.2 of the Rules of Procedure to allow the Tenant's claim for compensation or to allow the Landlord to seek unpaid rent as part of the hearing without having first filed an Application for Dispute Resolution with the Branch seeking such compensation.

The hearing therefore proceeded only on the matter of validity of the 10 Day Notice and recovery of the filing fee.

#### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice?

Is the Tenant entitled to recovery of the filing fee?

#### Background and Evidence

Although the parties agreed that a written tenancy agreement exists, a copy of the tenancy agreement was not submitted by either party for my review. During the hearing the parties agreed that the tenancy started in January 2020, but disputed the start date with the Tenant arguing it commenced January 1<sup>st</sup> and the Landlord arguing it commenced January 27<sup>th</sup>. The parties were in agreement that rent in the amount of \$1,200.00 is due on the 5<sup>th</sup> day of each month.

The 10 Day Notice in the documentary evidence before me, signed and dated September 10, 2020, has no effective date listed and does not name the Landlord or the person serving the notice. The 10 Day Notice states that it was personally served on September 11, 2020, as \$2,400.00 in rent for March 5, 2020, and April 5, 2020, were outstanding.

The Tenant and the Occupant stated that the 10 Day Notice was personally served on the Occupant on September 11, 2020, at the rental unit but the Landlord denied numerous times during the hearing that the 10 Day Notice was served in person, stating instead that it was served by text message on September 11, 2020.

During the hearing the Tenant and Occupant denied that any rent was owed.

### Analysis

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice and requires that any such notice comply with section 52 of the Act in order to be valid.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. It also states that the onus to prove validity of a notice to end tenancy falls to the landlord, even when a tenant disputes a notice to end tenancy. As a result, I find that the Landlord bears the burden of proof in this matter and must therefore satisfy me that the 10 day Notice was served in accordance with the Act, that they have grounds for ending the tenancy pursuant to section 46 of the Act, and that the 10 day Notice complies with section 52 of the Act.

Although the Landlord stated that the 10 Day Notice was served on the Tenant on September 11, 2020, via text message, the Tenant denied receipt of the 10 Day Notice via text and the Landlord submitted no documentary or other evidence to corroborate this testimony. As a result, I am not satisfied that the 10 Day Notice was served on the Tenant by text message on September 11, 2020, as alleged by the Landlord. I also find that text message is not an approved method of service for a notice to end tenancy under section 88 of the Act.

Further to this, as the 10 Day Notice does not contain an effective date, I find that it does not comply with section 52 of the Act. The 10 Day Notice also appears to relate, at least in part, to affected rent as set out in the COVID 19 Regulation, and there was no evidence before me that the Landlord had served a valid repayment plan for that rent or that a valid prior agreement was in place for the repayment of the affected rent, or that the Tenant had failed to meet repayment arrangements set out in a valid repayment plan or prior agreement, as required for the issuance of a 10 Day Notice for affected rent.

Based on the above, I find that the 10 Day Notice is not valid, and I order that it is cancelled and of no force or effect. As the Tenant was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Pursuant to section 67 of the Act, the Tenant is therefore entitled to a Monetary Order in the amount of \$100.00.

Conclusion

The 10 Day Notice dated September 10, 2020, is cancelled.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$100.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 10, 2020

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Residential Tenancy Branch