



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, MNDCT, RR, OLC, LRE

### Introduction

This hearing was convened as a result of the Tenants' Applications for Dispute Resolution, made on October 14, 2020 and on November 5, 2020 (the "Applications"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel two 10 Day Notices for unpaid rent or utilities (the "10 Day Notices") dated October 11, 2020 and November 2, 2020;
- a monetary order for damage or compensation;
- an order granting a rent reduction;
- an order that the Landlord comply with the *Act*; and
- an order to restrict or suspend the Landlord's right to enter.

The Tenants, the Landlord, the Landlord's Agent R.S. and the Landlord's Representative G.C. attended the hearing at the appointed date and time.

The Tenants testified that they served the Landlord with their first Application on October 15, 2020 and their documentary evidence on October 24, 2020. The Landlord confirmed receipt. The Landlord's Agent stated that the Landlord served the Tenants with a copy of the Landlord's documentary evidence. The Tenants confirmed receipt. I find that above noted documents were sufficiently served pursuant to Section 71 of the *Act*.

### Preliminary Matters

The Tenants stated that they served their second Application to the Landlord by posting it to the Landlord's door on November 6, 2020. The Landlord stated that they did not

receive this Application from the Tenants and were unaware that the Tenant had applied to dispute the second 10 Day Notice to End Tenancy dated November 2, 2020.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The Tenants have not served the Landlord in a manner required by section 89(1) of the *Act*. I am not satisfied that the Landlord was properly served with the Tenant's second Application for dispute resolution. As both parties were in attendance in relation to the Tenant's first Application, the hearing continued.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenant's request for a monetary order for money owed or compensation for damage or loss, an order granting a rent reduction, an order that the Landlord comply with the *Act*, and order to restrict or suspend the Landlord's right to enter are dismissed with leave to reapply.

The parties were given an 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 Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 the *Act*.

#### Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the two 10 Day Notices dated October 11, 2020 and November 2, 2020, pursuant to Section 46 of the *Act*?
2. If the Tenants are not successful in cancelling the 10 Day Notices, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

#### Background and Evidence

The parties testified that the tenancy began on April 1, 2020. Currently, rent in the amount of \$1,600.00 is due to be paid to the Landlord by the first day of each month. A security deposit in the amount of \$800.00 was paid to the Landlord. The Tenants continues to occupy the rental unit.

The Landlord's Agent testified that the Tenants failed to pay rent in the amount of \$6,160.00 as of November 1, 2020. The Landlord's Agent stated that this amount is comprised of \$1000.00 owing for April 2020, \$360.00 owing for August 2020, \$1,600.00 owing for September, \$1,600.00 owing for October 2020, and \$1,600.00 owing for November 2020.

The Landlord's Agent stated that the Tenants were served in person on November 2, 2020 with the 10 Day Notice dated November 2, 2020 with an effective vacancy date of November 13, 2020. The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$6,160.00. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenants had five days to dispute the Notice. The Tenants confirmed having received the

notice on November 2, 2020 and disputed the 10 Day Notice within the appropriate timelines.

The Landlord's Agent testified that the Tenants have made no payments to the Landlord since receiving the 10 Day Notice. Furthermore, the Landlord's Agent stated that the Tenants have also failed to pay rent for the month of December 2020 and January 2021. The Landlord's Agent stated that the Tenants currently have an outstanding balance of unpaid rent in the amount of \$9,360.00. The Landlord provided a copy of two rent receipts which were provided to the Tenants for April and May 2020 rent.

In response, the Tenants stated that they have paid rent in full to the Landlord in cash each month. The Tenants stated that the Landlord refused other forms of rent payments and refuses to provide the Tenants with rent receipts despite their requests for receipts each month. The Tenants stated that they have attempted to pay their rent to the Landlord via e-transfer, however, the Landlord did not accept the e-transfer before it expired. The Tenants stated that they attend their financial institution each month to withdraw \$1,600.00 to pay to the Landlord. The Tenant provided a copy of some text messages between the parties in support.

### Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenants must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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* states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

In relation to the 10 Day Notice dated November 2, 2020, the Landlord's Agent testified that the Tenants were served the 10 Day Notice in person on November 2, 2020. The Tenants acknowledged receipt on this date and in this manner. Therefore, pursuant to section 88 of the *Act*, I find the above document was sufficiently served for the purposes of the *Act*.

Although the Tenants testified that they had paid rent in cash to the Landlord each month, they provided insufficient evidence to support this testimony such as bank statements showing the rent money being withdrawn from their account each month, or the confirmation of the attempted e-transfer payments. The Tenants provided a number of text messages in which the Tenant requested a rent receipt from the Landlord in September 2020. I find that the Tenants provided insufficient evidence to demonstrate that a receipt was requested each month as stated by the Tenants during the hearing.

On the other hand, the Landlord testified that rent was not paid in full for April, August, September, October, November December 2020, and January 2021. The Landlord provided two rent receipts to confirm the rent payments that had been made by the Tenants. Furthermore, I find that the Landlord has served several 10 Day Notices to the Tenants in relation to their failure to pay the rent.

For these reasons, I find it more likely than not in this case, the absence of rent receipts demonstrates that rent was not paid as stated by the Landlord. I am satisfied on a balance of probabilities that the Tenants have not paid the amount shown on the 10 Day Notice, and that no rent has been paid since. As a result, I dismiss the Tenants' applications to cancel the 10 Day Notices without leave to reapply.

Under section 55 of the *Act*, when a Tenants' Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notices comply with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the *Act*. This order should be served onto the Tenants as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants' Applications are dismissed without leave to reapply. The Landlord is granted an order of possession effective 2 days after service on the Tenants. The order should be served as soon as possible and may be filed in the Supreme 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 *Residential Tenancy Act*.

Dated: January 11, 2021

---

Residential Tenancy Branch