



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNR-MT

### **Introduction**

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46; and
- more time to make an application to cancel the Notice pursuant to section 66.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:14 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

### **Preliminary Issue – Identity of Parties**

At the outset of the hearing, the landlord testified that the tenants had used an incorrect name for him on their application. He testified that they wrote his middle name as his surname name. He provided his surname to me (recorded on the cover of this decision). Accordingly, I amend this application so that the landlord's surname is included.

Additionally, the landlord testified that one of the tenants listed on the application was not actually a tenant but was rather the other tenant's son. The son was not listed on the Notice or the tenancy agreement. Accordingly, I amend the application to remove the male named tenant as a party to this application.

### **Preliminary Issue – Service of Documents**

The landlord acknowledged service of the tenant's notice of dispute resolution proceeding form. He also testified that that he did not submit any documentary evidence in response to the tenant's application.

### **Issues to be Decided**

Are the tenants entitled to:

- 1) an order cancelling the Notice; and
- 2) more time in which to have applied to cancel the Notice?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a tenancy agreement starting September 1, 2019. The rental unit is a two-bedroom basement suite. The landlord lives on the upper floor. Monthly rent is \$1,800 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$900, which the landlord continues to hold in trust for the tenant.

The landlord testified that the tenant was negatively affected by the COVID-19 pandemic. He testified that the last time the tenant paid her monthly rent in full and on time was May 2020. He testified that he worked with the tenant and try to accommodate her financial needs. However, on October 1, 2020, the tenant did not pay any amount of the monthly rent owed. The landlord testified that he requested that the tenant pay the monthly rent on October 1, October 7, and October 13, 2020, and that the tenant did not pay any part of the October rent owed.

Accordingly, the landlord issued the Notice on October 14, 2020. He testified that he slid the Notice under the interior door of the rental unit which joins the rental unit to the upper unit. He testified that this is how he delivered all of the tenant's mail to the tenant (the tenant does not have her own mailbox).

The tenant disputed the Notice with the residential tenancy branch on October 20, 2020.

The landlord testified that, to date, the tenant has only paid \$100 of the October 2020 arrears, which she paid on November 1, 2020.

### **Analysis**

#### **1. Extension of Time**

Section 88 of the Act sets out how parties may serve one another with documents pursuant to the Act. It does not list sliding a document under the door of a rental unit to be an appropriate form of service. However, section 71(2) of the Act grants an arbitrator the authority to find the document is sufficiently served for the purposes of the Act, even if not served in accordance with section 88.

In the circumstances, as the tenant usually receives her mail in the manner the landlord served her with the Notice, and as the tenant disputed the Notice (which indicates that she received it), I find inappropriate to exercise my discretion under section 71(2). I find that the landlord sufficiently served the Notice on the tenant for the purposes of the Act.

Section 90 of the Act addresses when documents are considered to have been received. It states that documents served by attaching a copy of the document to a door of a rental unit are deemed to have been received on the third day after it was attached. I have no evidence before me which would suggest the date the tenant actually received the Notice, so I find it appropriate to deem that she received it three days after it was slid under her door. As such, I find the tenant was served with the Notice on October 17, 2020.

The tenant disputed the Notice on October 20, 2020. As such, I find that she does not require an extension of time as she has sought in this application. She has filed to dispute the notice within the five-day window set out in section 46 of the Act.

## 2. Validity of the Notice

I accept the landlord's undisputed testimony that the tenant failed to pay the rent that was due on October 1, 2020. I find that the tenant has not paid the full amount of October arrears as of the date of this hearing.

On this basis I find that the Notice was validly issued. Accordingly, I dismiss the tenant's application to cancel the Notice.

Section 55 of the Act states:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the Notice complies with section 52.

At the hearing, the landlord indicated that he sought the order of possession to be effective on January 31, 2021. Accordingly, I grant the landlord an order of possession against the tenant effective on January 31, 2021 at 1:00 pm.

**Conclusion**

The tenant's application is dismissed, without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by January 31, 2021 at 1:00 pm.

The landlord must serve the tenant with a copy of this decision and the attached order as soon as possible upon receipt.

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 12, 2021

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Residential Tenancy Branch