



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, LRE, OLC, MNDCT, FFT

### Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlords' property manager also attended and was affirmed.

Both parties agreed that the tenant's application for dispute resolution was personally served on the landlord, though neither could recall the date. I find that the tenant's application for dispute resolution was served on the landlords in accordance with section 89 of the *Act*.

### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent dated November 4, 2020 (the “10 Day Notice”) is not sufficiently related to any of the tenant’s other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the 10 Day Notice.

The tenant’s other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss all of the tenant’s claims with leave to reapply except cancellation of the 10 Day Notice and recovery of the filing fee for this application.

### Issues to be Decided

1. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant’s and landlord’s claims and my findings are set out below.

Both parties agreed to the following facts. The tenant moved into the subject rental property at the end of June 2020 and rent started to be due and payable on July 1, 2020. This was a verbal tenancy agreement.

Both parties initially agreed that rent in the amount of \$1,300.00 was due and payable on the first day of each month. The landlords later changed their testimony and testified that rent was due on the last day of each month.

The landlords testified that the 10 Day Notice was served on the tenant via registered mail on November 4, 2020. The tenant testified that she received the 10 Day Notice via registered mail but could not recall on what date. The tenant applied to cancel the 10 Day Notice on November 9, 2020.

The 10 Day Notice was entered into evidence and states that the tenant failed to pay rent in the amount of \$1,300.00 that was due on October 31, 2020.

Both parties agree that prior to the issuance of the 10 Day Notice, the parties verbally agreed that rent paid for August 2020 would be applied to November 2020. Both parties agree that the tenant did not owe any rent for August 2020 because the subject rental property was being restored following a water leak.

The landlords testified that November 2020's rent was paid in full.

Several other Notices to End Tenancy were entered into evidence; however, the tenant did not file a claim to dispute them, and the landlords did not file a claim for an Order of Possession.

### Analysis

I find that the tenant was deemed served with the 10 Day Notice on November 9, 2020, five days after it was mailed, pursuant to sections 88 and 90 of the *Act*. The tenant applied to cancel the 10 Day Notice on November 9, 2020.

Section 46 of the *Act* states:

- 46** (1)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.
- (2)A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Pursuant to the testimony of both parties, I find that the tenant applied to cancel the 10 Day Notice in accordance with section 46 of the *Act*. Pursuant to the testimony of both parties, I find that November 2020's rent was paid in full and therefore the 10 Day Notice is of no force or effect.

As the tenant was successful in this application for dispute resolution, I find the tenant is entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlords.

I notified both parties at the hearing that as neither party made applications pursuant to the other Notices to End Tenancy, I would not be rendering a decision on them. I advised both parties that they would have to file an application for dispute resolution for those Notices to End Tenancy to be adjudicated.

### Conclusion

The 10 Day Notice is cancelled and of no force or effect.

The tenant is entitled to deduct \$100.00 on one occasion, from rent due to the landlord.

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: February 01, 2021

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Residential Tenancy Branch