



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on February 8, 2021.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

The parties confirmed that they are not recording the hearing in compliance with the Residential Branch Rules of Procedure 6.11.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy commencing in 1991 and there have been several different landlords. In 2012 the current landlord and his wife purchased the property. In 2018 the landlord's wife was removed from the land title document, due to a divorce proceedings and

landlord became the sole owner. Rent in the amount of \$150.00 is payable on the first day of each month and has not been increased during the tenancy.

I note that this is in part a family matter, as the male tenant is the brother of the landlord's ex-wife. However, the tenants have lived on this property since 1991, long before they became owners in 2012.

The parties agreed that the tenants had sent cheques for the rent to the landlord from March 1, 2018 to December 2020, which is the subject of this dispute. The landlord refused to cash the cheques, or they were returned to the tenants. Rent cheques commencing January 2021, have been cashed by the landlord.

Counsel for the tenants submits that the tenants have never been in default in paying the rent as the tenant gave the landlord cheques for each and every month that is the subject of this dispute. It was the landlord action of refusing to cash the cheques.

Counsel for the tenants submits that is unreasonable for the landlord to demand the rent they refused to accept from March 2018 to December 2020, now be paid. Then to issue the Notice, seeking to end tenancy based on this rent.

PR for the landlord testified that the landlord did receive rent cheques from the tenants; however, the landlord did not accept them as there was a dispute to the validity of the previous verbal agreement from all the previous landlords.

PR for the landlord testified when the landlord became the sole owner of the property the tenants were given 90 days to vacate; however, they refused to do so.

PR for the landlord testified that in October 2020, there was a potential sale of the property, and they had the tenant complete estoppel form to disclose to the potential buyers that a tenancy existed. It was also at this time that the tenants were told that the landlord would now accept their rent and that they had to repay the past rent in the amount of \$4,950.00 as the cheques given were either stale dated or returned.

PR for the landlord testified that the tenants did not pay the outstanding rent as demanded and therefore, they issued the Notice.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I accept there was a family dispute between the landlord and his ex-wife; however, that is not for me to consider. The tenants, while family members of the landlord's ex-wife, have lived on the property since 2012, long before they even purchased the property.

In this case, the tenants gave the landlord cheques for rent from March 2018 to December 2020. The landlord refused to either cash the cheques or they became stale dated over time or they were returned to the tenants. I find the landlord has failed to prove the tenants violated section 26 of the Act.

Further, I find it unreasonable that the landlord after nearly three years of refusing the rent, would then demand payment of this rent. I find the legal principle of estoppel would bar the landlord from making such a claim as the tenants had the right to rely upon those actions, that the landlord did not want the rent for that time period.

Furthermore, I find evicting the tenants based on the landlord's failure to cash the cheque would be unjustly wrong. Therefore, I find it appropriate to cancel the Notice. The tenancy will continue until legally ended.

Based on the above, I grant the tenants' application to cancel the Notice.

### Conclusion

The tenants' application to cancel the Notice is granted.

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

Dated: April 21, 2021

---

Residential Tenancy Branch