



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNR, OLC, FFT**

### 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, pursuant to section 46;
- 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.

The landlord and the tenants' agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

Both parties agree that the tenants served the landlord with this application for dispute resolution via registered mail. I find that the landlord was served with this application for dispute resolution in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Are the tenants entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
2. Are the tenants entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
3. Are the tenants 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 tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 25, 2020 and is currently ongoing. Monthly rent in the amount of \$2,200.00 is payable on the first day of each month. A security deposit of \$1,100.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on the tenants' door on April 9, 2021. The landlord testified that he also personally served the tenants with a copy of the 10 Day Notice on April 9, 2021. The agent testified that several warnings about rent were served between April 4-9, 2021. The agent testified that the 10 Day Notice was likely received by the tenants on April 9, 2021.

The 10 Day Notice that was entered into evidence is dated April 9, 2021 and states that the tenants failed to pay rent in the amount of \$2,200.00 due on April 1, 2021. Both parties agree that the tenants paid April 2021's rent in the amount of \$2,200.00 on April 13, 2021.

The landlord testified that he is no longer the tenants' landlord because he sold the subject rental property. The landlord testified that the new owners took possession of the subject rental property on July 14, 2021. The agent did not dispute the above testimony.

### Analysis

I accept the undisputed testimony of the landlord that the 10 Day Notice was posted on the tenants' door on April 9, 2021 and that the tenants were personally served with the 10 Day Notice on April 9, 2021. I find that the above service complies with the service requirements set out in section 88 of the *Act*.

Upon review of the 10 Day Notice, I find that it complies with the form and content requirements of section 52 of the *Act*.

Section 46(1) 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.

Section 46(4) of the *Act* states that if within 5 days after receiving a notice under this section, the tenant pays the overdue rent, the notice has no effect.

Both parties agreed that the tenants paid the rent stated as outstanding on the 10 Day Notice, on April 13, 2021. Since the tenants paid the outstanding rent within five days of the tenants' receipt of the 10 Day Notice, I find that the 10 Day Notice is of no force or effect, pursuant to section 46(4) of the *Act*.

The tenants applied for an Order for the landlord to comply with the *Act*. Both parties agree that the landlord named in this application is no longer the tenants' landlord as the subject rental property has been sold. I dismiss the tenants' claim for an Order for the landlord to comply with the *Act*, without leave to reapply, because there is no longer a landlord tenant relationship between the parties and the *Act* no longer governs their relationship.

Pursuant to section 72 of the *Act*, I decline to award the tenants the return of the filing fee because the tenants' claim for an Order for the landlord to comply with the *Act* was dismissed and the tenants did not need to file this application to cancel the 10 Day Notice as pursuant to section 46(4) of the *Act*, the 10 Day Notice was of no force or effect on April 13, 2021, when the outstanding rent was paid.

Conclusion

The 10 Day Notice is of no force or effect.

The remainder of the tenants' application is dismissed without leave to reapply.

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: August 17, 2021

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Residential Tenancy Branch