



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FFT

### Introduction

The Tenant seeks to cancel a 10-Day Notice to End Tenancy pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”) and return of their filing fee.

C.P. appeared on behalf of the Landlord. No one appeared for the Tenant.

The Landlord affirmed to tell the truth during the hearing. The parties were given a full opportunity to be heard, to present sworn testimony, question the other party and to make submissions. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord confirmed receipt of the Notice of Dispute Resolution and evidence from the Tenant, which was served by the Tenant on the Landlord’s office on May 26, 2021. The Landlord filed evidence with the Residential Tenancy Branch on September 3, 2021. At the hearing, C.P. acknowledged not having served the Tenant with the Landlord’s evidence.

The Landlord advised at the outset of the hearing that the Tenant had moved out of the rental unit on or about May 31, 2021. Given this, an order for possession was no longer necessary.

### Analysis

The hearing began as scheduled at 1:30 P.M. The Respondent Landlord attended the hearing by way of conference call and, though I waited until 1:40 PM, the Applicant Tenant did not.

Rule 7.1 of the Rules of Procedure provides as follows:

**7.1 Commencement of the hearing:** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I take note that pursuant to s. 55(1.1) of the *Act*, an order for unpaid rent must be made when a Tenant's application to cancel a 10-day notice is dismissed. Under the present circumstances, I decline to do so on the basis that the Landlord was unable to serve their evidence with respect to the unpaid rent on the Tenant. Under Rule 3.16 of the Rules of Procedure, a respondent must demonstrate that their evidence has been served on the applicant. Here, the Landlord acknowledged not having served their evidence. Given this, I am unwilling to make an order for unpaid rent when the Tenant has not had the benefit of reviewing the evidence which forms the case against them. To proceed otherwise would be procedurally unfair to the Tenant.

### Conclusion

I hereby dismiss the Tenant's application without leave to reapply. As the Tenant did not obtain the relief sought in their application, they must bear the cost of their filing fee.

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: September 14, 2021

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Residential Tenancy Branch