



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

The Tenant applies to cancel a 10-Day Notice to End Tenancy pursuant to s. 46 of the *Residential Tenancy Act* (the “*Act*”).

J.Z. appeared as advocate for the Landlord. C.L. appeared as agent for the Landlord. Y.Z. appeared on their own behalf as Landlord. R.N. and A.R. appeared on their own behalf as Tenants.

Both parties 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 the parties 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 Tenants served the Notice of Dispute Resolution and evidence on the Landlord by way of registered mail. The Landlord acknowledged receipt of the evidence and the Notice of Dispute Resolution. I find that the Notice of Dispute Resolution and evidence were served in accordance with s. 89 of the *Act*.

The Landlord submitted evidence to the Residential Tenancy Branch. They acknowledged not having served the evidence on the Tenants as they do not have a forwarding address. Pursuant to Rule 3.17 of the Rules of Procedure, I decline to consider this evidence.

The 10-Day Notice to End Tenancy was left in the Tenants’ mailbox at the rental unit on May 7, 2021. The Tenants acknowledged receiving it the same day. The parties confirmed that the Tenants moved out of the rental unit on August 15, 2021, rendering the issue of cancelling the 10-Day Notice to End Tenancy moot.

### Preliminary Issue – Tenants' Monetary Claim

The Tenants submitted documents in their evidence package related to a monetary claim they wished to make against the Landlord. I advised the Tenants of Rule 2.2 of the Rules of Procedure which states that “[t]he claim is limited to what is stated in the application.” The Tenants application is strictly limited to the cancellation of a 10-Day Notice to End Tenancy for unpaid rent and makes no mention of a monetary claim. Given this, I indicated to the Tenant that I would not consider any potential monetary claim and did not allow evidence related to the monetary claim to be considered. The hearing proceeded strictly on the issues tied to the Tenant’s application.

### Issue(s) to be Decided

- 1) Whether the 10-Day Notice to End Tenancy signed May 7, 2021 should be cancelled?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed that the tenancy in this matter commenced on July 1, 2016. Rent was \$3,000.00 payable on the first day of each month. Rent remained constant throughout the tenancy. The Landlord holds a security deposit of \$1,500.00 in trust for the Tenants.

The parties confirmed that the tenancy ended on August 15, 2021 when the Tenants vacated the rental unit.

The 10-Day Notice to End Tenancy in this matter notes that the Tenants were late in rent in the amount of \$29,430.00. The Landlord provided a monetary worksheet indicating rent paid and rent owing up to October 1, 2019. As of October 1, 2019, the Landlord indicates the Tenants owed them rent in the amount of \$16,630.00.

When asked to provide details on the figure cited in the 10-Day Notice to End Tenancy, the Landlord was unable to provide a specific response.

### Analysis

The Tenants make an application to cancel a 10-Day Notice to End Tenancy pursuant to s. 46. As the Tenants have vacated the rental unit, the issue of cancelling the 10-Day Notice to End Tenancy is moot. I therefore dismiss the Tenants' application to cancel the Notice to End Tenancy signed May 7, 2021.

Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then the Director must grant an order for unpaid rent. Under the present circumstances, I decline to do so on the basis that the Landlord was unable to provide sufficient clarity with respect to their claim for unpaid rent. The monetary worksheet that was provided is incomplete and it was unclear to me how they arrived at the amount claimed in the Notice to End Tenancy.

Critically, the Tenants did not have the benefit of reviewing the monetary worksheet in advance of the hearing as the Landlord failed to serve their evidence on the Tenants. As a result, the Tenants did not have the benefit of knowing the case against them and did not have time prepare a response. I decline to make an order for unpaid rent under the circumstances as to proceed otherwise would be procedurally unfair to the Tenants.

### Conclusion

The Tenants' application to cancel the 10-Day Notice to End Tenancy signed May 7, 2021 is hereby 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: September 22, 2021

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Residential Tenancy Branch