



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNR, OLC, RP, MNDCT**

### **Introduction**

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

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Sections 46(1) and 62 of the Act;
2. An Order that the Landlord comply with the Act, the regulations or the tenancy agreement pursuant to Section 62(3) of the Act;
3. An Order that the Landlord repair and maintain the residential property pursuant to Section 32 of the Act; and,
4. An Order for compensation that the Landlord must pay to the Tenant.

The hearing was conducted via teleconference. The Landlord, MZ, and Support person, SJZ, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

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

MZ and SJZ were each given a full opportunity to be heard, to present affirmed testimony, to question the arbitrator, and make submissions.

The Notice of Dispute Resolution Proceeding package was not served on the Landlord by the Tenant. SJZ said she received an email from the Residential Tenancy Branch

about today's hearing. I find that due to incomplete service, I dismiss the Tenant's claims seeking: an Order that the Landlord comply with the Act, the regulations or the tenancy agreement, an Order that the Landlord repair and maintain the residential property; and, an Order for compensation that the Landlord must pay to the Tenant without leave to re-apply.

However, I address the fact that the Tenant did pay the outstanding rent within the Act's time limitation for unpaid rent below.

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to unpaid rent and my findings in this matter are described in this decision.

The Landlord provided documentary evidence that this periodic tenancy began on January 15, 2020. MZ testified that the tenancy began on January 15, 2021. Monthly rent is \$1,050.00 payable on the first day of each month. No security deposit was collected at the start of the tenancy.

The Landlord's documentary evidence explained that during the hot July days this summer, the Tenant installed an air-conditioner and deducted the cost of the unit from her August rent payment. She paid \$528.27 at the beginning of August and was short \$521.73 for the balance. MZ had not agreed to this installation and served a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on August 2, 2021 by posting the 10 Day Notice on her door and leaving a copy in the mailbox. MZ provided proof of service of the 10 Day Notice dated August 2, 2021.

MZ testified that the Tenant paid the remainder, \$521.73, of the August rent on August 9, 2021. MZ also testified the Tenant has paid the September and October rent payments in full.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

- 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].
- ....
- (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 Section 90(c) and (d), the 10 Day Notice was deemed received on August 5, 2021. Pursuant to Section 46(4) of the Act, the Tenant had until August 10, 2021 to either pay the rent or apply for dispute resolution of the 10 Day Notice. The Tenant applied for dispute resolution on August 3, 2021, and the Tenant paid the outstanding amount of August's rent on August 9, 2021. I find that the outstanding amount of August's rent was paid within the 5 days that the Tenant had to pay the unpaid rent. Accordingly, the 10 Day Notice has no effect, and the tenancy will continue until ended in accordance with the Act.

Rules of Procedure, 3.5, states:

**3.5 Proof of service required at the dispute resolution hearing:** At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

As the Tenant did not attend the hearing and did not serve the Landlord with the Notice of Dispute Resolution Proceeding or any evidence, I cannot make any findings on the

remaining claims in the application. Pursuant to Section 62, I dismiss the remaining claims without leave to re-apply.

### Conclusion

The Tenant's claims for an Order that the Landlord comply with the Act, the regulations or the tenancy agreement, an Order that the Landlord repair and maintain the residential property; and, an Order for compensation that the Landlord must pay to the Tenant are dismissed without leave to re-apply.

As the Landlord has received the outstanding rent, the 10 Day Notice has no effect and the tenancy will continue until ended in accordance with the Act.

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

Dated: October 22, 2021

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Residential Tenancy Branch