



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, DRI, LRE

The Tenant filed an Application for Dispute Resolution (the “Application”) on September 3, 2021:

- a. to dispute the 10 Day Notice to End Tenancy Issued for Unpaid Rent (the “10-Day Notice”) issued by the Landlord on September 2, 2021;
- b. to suspend or set conditions on the Landlord’s right to enter the rental unit;
- c. to dispute a rent increase that is above the amount allowed by law.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 17, 2022. Both the Landlord and the Tenant attended the conference call hearing. I explained the process and each party had the opportunity to ask questions and present oral testimony during the hearing.

### Preliminary Matters

At the outset, I advised both parties of the immediate issue concerning the 10-Day Notice. This decides whether the tenancy will continue or end.

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on the 10-Day Notice. I also consider the Tenant’s pretext for withholding rent, which

concerns what they allege is an illegal rent increase. By Rule 6.2, I do not consider the issue concerning the Landlord's unauthorized entry into the unit. By Rule 2.3, I these issues are unrelated; in line with these I dismiss these matters.

The Landlord provided that they received notice of this hearing from the Tenant and confirmed they received the documents prepared by the Tenant as evidence for this hearing. The Landlord prepared their own evidence in response to the Tenant's Application, and on September 13, 2021 they provided 11 pages of their own evidence to the Residential Tenancy Branch for this hearing. That material receives my full consideration herein.

In the hearing the Landlord set out that they made their own application for dispute resolution more recently. They did this in response to the Tenant's Application. They provided material for that separate file that was not linked to this hearing file. They also provided this material – some 37 pages, as stated in the hearing – directly to the Tenant. I instructed the Landlord to provide the material to this current file and gave them the opportunity to do so by the end of the scheduled hearing date. The Landlord did not submit that material as instructed; therefore, I give this material no consideration herein because it is past the deadline for its submission. The Landlord had the full opportunity to provide evidence and testimony in the hearing, in response to the Tenant's Application.

### Issues to be Decided

Did the Landlord increase rent above the amount allowed by law?

Is the Tenant entitled to a cancellation of the 10-Day Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

### Background and Evidence

The Tenant provided a copy of the parties' initial tenancy agreement. This shows the Landlord signing the agreement on July 19, 2020; the Tenant stated they signed the agreement as well for the tenancy that started on August 1, 2020. The rent amount was set at \$925 for the Tenant as the sole occupant of the rental unit. The Tenant paid a security deposit of \$412.50. The Landlord pointed to a specific clause in the attached addendum that stated, "Absolutely no

roommates or subletting permitted.” There is no clause in the agreement that sets a rent amount based on the number of occupants.

At some point in 2021, the Tenant’s friend visited, and this turned into an extended stay. The Landlord reiterated in the hearing that this turned into a period of 5 months. After the third month, the Landlord stated they needed a new tenancy agreement. The Landlord provided a copy of that agreement showing another tenant signing with the Tenant here, on May 30, 2021. This set the rent amount at \$1,025. This agreement similarly contains no clause that provides for a variable rent amount based on the number of occupants.

The Landlord produced a note from the other tenant, undated, stating simply: “I will move out by the end of July”. A description in the Landlord’s material states: “Came home, [second tenant] is gone and [the Tenant] decided to pay \$100.00 less rent.”

The Landlord issued the 10-Day Notice on September 1, 2021. Both parties in the hearing agreed this was for the Tenant paying the amount of \$925 for rent on September 1, 2021. The Tenant’s own record shows their payment of this amount. The Landlord’s point is that this is \$100 less from the actual contracted amount of \$1,025 as set out in the current version of the tenancy agreement. The 10-Day Notice set the final date of the tenancy as September 11, 2021.

The Landlord provided a “Proof of Service” document showing they issued the 10-Day Notice on September 1, 2020 [*sic*] at 11:30am, posting the document on the Tenant’s door as witnessed by the handyman.

### Analysis

The term “rent increase” is set out in the *Act* s. 40:

- In this Part, “rent increase” does not include an increase in rent that is
- (a) for one or more additional occupants, and
  - (b) is authorized under the tenancy agreement by a term referred to in section 13(2)(f)(iv).

As specified in s. 13(2)(f)(iv), a tenancy agreement must set out the amount of rent payable, and it must also specify if the amount varies with the number of occupants and by how much.

The Tenant signed a second tenancy agreement here with the Landlord on May 30, 2021. That set the rent amount at \$1,025. That is a legally binding agreement, and there is no

clause therein that states the amount of rent varies with the number of occupants. From that point forward, the rent amount was \$1,025 and the second tenant leaving later did not revert the rent amount back to the prior amount. This was not an illegal rent increase; therefore, I dismiss this portion of the Tenant's claim without leave to reapply.

To look at the 10-Day Notice, the *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The Tenant was obligated to pay rent under the tenancy agreement, and they had no right to reduce any amount of rent. The Tenant failed to pay the full amount of rent they owed as they verified as fact in the hearing.

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

The Landlord issued and served the 10-Day Notice on September 1, 2021. Proof of this is their signature on the 10-Day Notice beside this date, their setting of September 11 as 10 days past the date of issuance, and the Proof of Service showing service on September 1, 2021. I infer the Landlord erred in writing "2020" on the document showing they posted it to the Tenant's door on September 1, 2020.

The reason for the Landlord issuing the 10-Day Notice, on its face, shows the Landlord issued this for the Tenant's non-payment of September 2021 rent *only*. There was no indication of non-payment or lesser payment in the month prior.

The Landlord issued this document before the end of the day on which the rent amount was due. This is not allowed as per s. 46 of the *Act* which provides strictly in its wording "A landlord may end a tenancy if rent is unpaid **on any day after the day it is due.** . ." The rental payment day, as per the agreement, was not complete before the Landlord issued this notice before noon on that day. I find the 10-Day Notice is not valid for this reason and order it cancelled. Because the Tenant was successful in their Application, there is no Order of Possession to the Landlord and the tenancy shall continue.

## Conclusion

For the reasons above, I order the 10-Day Notice issued by the Landlord on September 1, 2021 is cancelled and the tenancy remains in full force and effect.

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

Dated: January 19, 2022

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Residential Tenancy Branch