



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, RP, LRE, PSF, OPR, MNRL, FLL

### Introduction

This hearing dealt with cross-applications filed by the parties. On September 9, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, and seeking a provision of services or facilities pursuant to Section 62 of the *Act*.

On September 21, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On September 29, 2021, these Applications were set down for a Dispute Resolution Proceeding on January 21, 2022 at 11:00 AM.

The Tenant attended the hearing; however, the Landlord did not attend at any point during the 22-minute teleconference. At the outset of the hearing, I informed the Tenant that recording of the hearing was prohibited and he was reminded to refrain from doing so. He acknowledged this term. As well, he provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that 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.

As the Landlord did not attend the hearing, his Application is dismissed without leave to reapply.

The Tenant advised that he served the Landlord with his Notice of Hearing package by registered mail on or around September 24, 2021; however, he did not submit proof of this. Based on this solemnly affirmed testimony, I am satisfied that the Landlord was deemed to have received this package five days after it was mailed.

He then advised that he submitted his evidence to the Residential Tenancy Branch; however, he did not serve this to the Landlord. As this evidence was not served in accordance with Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

At the outset of the hearing, the Tenant was advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started mid-April 2021, that the rent was currently established at an amount of \$1,200.00 per month, and that it was due between the first and fifth day of each month, depending on when the Landlord would come to pick it up. A security deposit of \$600.00 and a pet damage deposit of \$600.00 were also paid. He stated that the Landlord did not create a written tenancy agreement, despite his requests that the Landlord provide him with one. The Landlord is cautioned that he is required by law to have a tenancy agreement in writing.

He stated that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was posted to his door on September 4, 2021. However, he had already paid the Landlord the rent in cash on September 1 or 2, 2021. He did not have any proof that the rent was paid, but he claimed that he would always pay the rent in cash and that the Landlord would never provide receipts for these payments. He submitted that since October 2021, the Landlord stopped coming by to collect the rent, so he has been mailing the rent in cash each month to the Landlord's business address.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

I find it important to note that the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. As the Landlord has not appeared at the hearing, I am not satisfied that the Landlord has properly substantiated the grounds for ending the tenancy, and I find that the Application for Dispute Resolution has been abandoned. As such, I am not satisfied of the validity of the Notice. Therefore, the Notice of September 4, 2021 is cancelled and of no force or effect.

As an aside, the Tenant has claimed that he has been paying rent in cash and that the Landlord has not been issuing receipts for these rent payments. Obviously, issuing receipts for rent payments in cash protects both parties in the event of a dispute. Regardless, the Landlord is required under Section 26 of the *Act* to issue rent receipts to the Tenant for rent paid in cash. If the Landlord has not been doing so, the Landlord is **Ordered** to commence immediately and provide rent receipts going forward for all cash payments.

As the Landlord did not attend the hearing, his Application is dismissed without leave to reapply. As such, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

Based on the above, I dismiss the Landlord's Application for Dispute Resolution without leave to reapply. In addition, I hereby Order that the 10 Day Notice to End Tenancy for Unpaid Rent of September 4, 2021 to be cancelled and of no force or effect. Finally, I **Order** that the Landlord comply with the *Act* and issue rent receipts for cash payments going forward if he has not been doing so.

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: January 21, 2022

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Residential Tenancy Branch