



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants on September 10, 2021, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant O.V. (the Tenant), the Landlord D.Z. (the Landlord), and another owner of the rental unit Y.Z. All testimony provided was affirmed. The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, which contains the Application and the Notice of Hearing, and stated that they had no concerns regarding the method or timing of service. As a result, I find that they were sufficiently served for the purpose of the Act and the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), and the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the

proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenant, a copy of the decision and any orders issued in their favor will be mailed to them at the rental unit address, as they stated that they have a mail forwarding service in place. At the request of the Landlord a copy of the decision and any orders issued in their favor will be emailed to them at the email address listed in the Application.

### Preliminary Matters

At several points during the hearing the Tenant requested that the hearing be adjourned. Their first request was at the outset of the hearing. I advised the Tenant that I would consider their request after I had covered introductory and preliminary matters, the ground rules for the proceeding, and affirmed the parties.

After doing the above, I asked the Tenant why they wished to seek an adjournment, when they were able to attend the hearing themselves. The Tenant stated that one of the other Tenants listed as an Applicant in the Application wished to participate in the hearing, but was unable to do so due to a regularly reoccurring standing medical appointment. Although the Rules of Procedure allows for parties to request, in advance of the hearing, that a hearing be rescheduled, this process necessitates that the Residential Tenancy Branch receive signed written consent to do so from all parties. Although the Tenant stated that the Landlord was aware of the other Tenant's reoccurring and regularly scheduled standing appointment, they presented no evidence or testimony that they attempted to obtain the Landlord's signed written consent to reschedule the hearing. However, I acknowledge that the hearing was rescheduled by the Branch due to unavailability of the original arbitrator on January 21, 2022, and the hearing date was changed from January 24, 2022, at 9:30 A.M. to January 27, 2022, at 9:30 A.M.

Further to this, as Tenant's are jointly and severally liable, and parties are entitled to be represented by another person at the hearing, I find that attendance of all named parties at the hearing is not, as a matter of course, necessary to proceed with a hearing. Finally, no documentary or other corroboratory evidence was submitted for my review

and consideration to verify that the other Tenant was unable to attend the hearing for the reasons stated by the Tenant O.V. at the hearing, or to demonstrate why the attendance of only the Tenant O.V. at the hearing was not sufficient in order for the hearing to proceed as scheduled, and I found that the matter was urgent, as it related to a notice to end tenancy and possession of the rental unit. As a result, I declined the Tenant's request for an adjournment, and the hearing proceeded as scheduled.

The Tenant again requested another adjournment during the course of the hearing, largely for the same reasons noted above, but also in order to amend their Application and seek monetary compensation from the Landlord related to a different notice to end tenancy, a Four Month Notice to End Tenancy for Landlord's Use of Property (the Four Month Notice). I advised the Tenant that the Rules of Procedure allow parties to amend an Application up to 14 days prior to the hearing, by filing an Amendment to the Application for Dispute Resolution with the Residential Tenancy Branch, and serving a copy on the respondent(s). I advised the Tenant that although rule 4.2 of the Rules of Procedure allows parties to amend an application at the hearing in very limited circumstances, this requires a finding by the arbitrator that the respondent(s) could reasonably have anticipated the amendment, which I do not find is the case here, as the Application relates to cancellation of a 10 Day Notice, not a Four Month Notice.

I advised the Tenant that they were entitled to file a separate application seeking monetary compensation from the Landlord, should they wish to do so, but that I would not amend this application at the hearing or adjourn this hearing in order to allow this Application to be amended for that purpose.

#### Issue(s) to be Decided

Are the Tenants entitled to cancellation of the 10 Day Notice?

Are the Tenants entitled to an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement?

Are the Tenants entitled to recovery of the filing fee?

#### Background and Evidence

The parties agreed that a tenancy to which the *Act* applied existed between the Landlord and the Tenants and that the tenancy ended sometime between October 1, 2021, and October 3, 2021, as the result of the Four Month Notice. The parties also

agreed that rent had not been paid by the Tenants for September 2021, and that the Tenants were entitled to withhold this rent as compensation related to the Four Month Notice, pursuant to sections 51(1) and 51(1.1) of the *Act*.

The Landlord acknowledged that the 10 Day Notice was therefore served in error on the Tenants. The 10 Day Notice in the documentary evidence before me is in writing on the approved form, is signed and dated September 5, 2021, has an effective date of September 16, 2021, and states that the Tenants failed to pay \$2,945.00 in rent due on September 1, 2021.

The Four Month Notice in the documentary evidence before me is in writing on the version of the Residential Tenancy Branch form (RTB-29) dated March 11, 2021, is signed and dated March 22, 2021, has an effective vacancy date of September 30, 2021, and states that the notice has been issued because the Landlord is demolishing the rental unit.

### Analysis

Section 26 (1) of the *Act* states that a tenant must 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. Section 51(1) of the *Act* states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Section 51(1.1) further states that a tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord. Finally, section 46(1) of the *Act* states that 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.

At the hearing the parties agreed that the Tenants had lawfully withheld September 2021 rent pursuant to sections 51(1) and 51(1.1) of the *Act*, as the result of the Four Month Notice. The Landlord also acknowledged that the 10 Day Notice had been served in error.

Based on the above, I am satisfied that the Tenants were not required to pay rent for September 2021. As a result, I am not satisfied that the Landlord had grounds to serve

or enforce the 10 Day Notice and I therefore grant the Tenants' Application seeking its cancellation. As the Tenants' Application relating to an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement related solely to their request that the 10 Day Notice be cancelled as they were entitled to withhold the rent under sections 51(1) and 51(1.1) of the *Act*, I have not made any separate findings of fact in relation to that claim.

Despite the above, I find that the tenancy already ended in October of 2021 as the result of a different notice to end tenancy (the Four Month Notice), that the parties agreed was not disputed by the Tenants and the validity and enforceability of which was not before me for consideration

As the Tenant's were successful in their Application, I grant them recovery of the filing fee, pursuant to section 72(1) of the *Act*. Pursuant to section 67 of the *Act*, I therefore grant the Tenants a Monetary Order in the amount of \$100.00, and I order the Landlord to pay this amount to the Tenants.

### Conclusion

The Tenants' Application seeking cancellation of the 10 Day Notice is granted, however, the tenancy already ended in October of 2021 as the result of a different notice to end tenancy.

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of **\$100.00**. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 2, 2022

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Residential Tenancy Branch