



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC, MNDCT, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued December 4, 2021, for an order for the Landlord to comply with the Act, for a monetary order for losses or money owed, and the recovery of the filing fee for these proceedings. The matter was set for a conference call.

Both Tenants, the Tenants Advocate (the “Tenants”), and one of the Landlords (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. The parties testified that they exchanged the documentary evidence that I have before me. The hearing process was explained, and the parties were provided with an opportunity to ask questions about the hearing process. All parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

### Preliminary Matters- Related Issues

I have reviewed the Tenants' application, and I note that the Tenants have applied to cancel a Notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenants request to cancel the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply the Tenants' claims for an order for the Landlord to comply with the Act, for a monetary order for losses or money owed.

I will proceed with this hearing on the Tenants' claim to cancel the 11-Day Notice and to recover the filing fee for this application.

### Issues to be Decided

- Should the 10-Day Notice be cancelled?
- If not, are the Landlords entitled to an Order of Possession?
- Are the Tenants entitled to the recovery of her filing fee for this application?

### Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both the Tenants and the Landlord agreed that a Notice was served through registered mail, sent on December 4, 2021, with rent of \$2,737.23 listed as outstanding at the time of service.

The Landlord testified that they received the full outstanding rent as indicated on the Notice on December 5, 2021.

The Tenant stated they made a \$3,000.00 payment to the Landlord on December 3, 2021, through their bank direct payment system.

The Landlord testified that payments made through that system are generally received within approximately two days of the payment being made. The Landlord confirmed that the Tenants' \$3,000.00 payment was applied to the outstanding balance that had been indicated on the Notice and that they understood that this payment satisfied their Notice and that the Tenants did not need to file to dispute their Notice.

The Tenants testified that they also understood that this payment cancelled the Notice issued by the Landlord on December 4, 2021.

### Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord served the Notice to the Tenants by registered mail sent on December 4, 2021, which is an approved method of service provided for under section 88 of the *Act*.

Based on the deeming provisions set out in section 90 of the act, documents served by this method are deemed received five days later; I find that the Tenants were deemed to have received this Notice on December 9, 2021. I have reviewed the Notice and noted that it was recorded on the Notice that rent for December 2021 was outstanding, in the amount of \$2,737.23, and listed an effective date of December 20, 2021.

I accept the testimony of the Tenants that they made a \$3,000.00 payment to the Landlords on December 3, 2021. I also accept the testimony of the Landlords that they received the Tenants' \$3,000.00 two days later, on December 5, 2021.

Section 46 of the Act states the following:

***Landlord's notice: non-payment of 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].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(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.*

When a tenant receives a 10-Day Notice to end the tenancy for unpaid rent, the *Act* provides five days in which the tenant may pay the full outstanding rent amount indicated on the notice. If a tenant does this, the notice is of no effect, as per section 46(4) of the *Act*. Accordingly, I find that the Tenant had until December 14, 2021, to either pay the outstanding rent as indicated on the notice or file an application for dispute resolution to dispute the Notice.

I accept the testimony of the Landlords that they received the full outstanding rent as indicated on the Notice on December 5, 2021. I find that the Tenants did pay the outstanding rent due within five days of receiving the Notice, as allowed by the *Act*, rendering the Notice of no effect.

Consequently, I find that there is no need for me to determine the validity of this Notice, as pursuant to section 46(4) of the *Act*, this Notice is of no effect.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant did not need to file for this application to dispute this Notice, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to section 46(4) of the *Act*, I find that the Notice issued December 4, 2021, is of no force or effect. The tenancy will continue until legally 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 *Residential Tenancy Act*.

Dated: February 4, 2022

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Residential Tenancy Branch