



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNR, FFT**

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* ("Act"). The Tenants applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated November 4, 2021 ("10 Day Notice") pursuant to section 46; and
- authorization to recover the filing fee pursuant to section 72 of the Act.

The Landlords did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 9:44 am, in order to enable the Landlords to call into this teleconference hearing. One of the two Tenants ("RM") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 RM and I were the only ones who had called into this teleconference.

RM testified the Notice of Dispute Resolution Proceeding and the Tenants' evidence ("NDRP Package") was served on each of the two Landlords in-person on November 17, 2021. I find that NDRP Packages were served on the Landlords in accordance with sections 88 and 89 of the Act.

RM testified the Landlords did not serve any evidence on the Tenants.

Preliminary Matter – Effect of Non-Attendance by Landlords

Rules 6.6 and 7.4 of the *Residential Tenancy Branch Rules of Procedure* state:

**6.6 The standard of proof and onus of proof**

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. In most circumstances this is on the person making the application. However, in some situations the arbitrator may determine the onus is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, even though this is the Tenants' application, the Landlords bear the evidentiary burden to prove it is more likely than not that the 10 Day Notice is valid. The Landlords must meet this burden even if the Tenants do not attend the hearing.

Issues

Are the Tenants entitled to:

- an order cancelling the 10 Day Notice?
- reimbursement of the filing fee for their application from the Landlords?

### Background and Evidence

While I have turned my mind to all 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. The principal aspects of the Tenants' application and my findings are set out below.

The tenancy commenced on January 1, 2016, for a fixed term ending June 30, 2021, with rent of \$1,250 payable on the 1<sup>st</sup> day of each month. The Tenants were required to pay a security deposit of \$625.00.

RM testified the Tenants vacated the rental unit on or about November 29, 2021. RM stated the Tenants paid the rent of \$1,315.00 for November 2021. RM submitted a copy of a cheque drawn from his bank account showing the cheque had cleared his financial institution on November 2, 2021.

RM stated that, after the Tenants made their application, the manager of the residential premises sent the Tenants a letter dated November 10, 2021 (the "Letter"), together with the Tenants' Ledger, confirming the Tenants were served with the 10 Day Notice by the Landlord in error. The Tenants' Ledger that was enclosed with the Letter discloses the Tenants paid the rent for November 2, 2021. RM stated that the manager told him the Landlords would not reimburse the Tenants for the filing fee of their application.

### Analysis

Section 46 of the Act states:

- 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.

The undisputed testimony of RM was the rent for November 2021 was paid in full by cheque. RM's testimony was corroborated by the Tenant's Ledger which disclose the November rent was paid on November 2, 2021 and a copy of SM's cancelled cheque for the November rent. I find the Tenants paid the November 2021 rent. I find the Landlord did not have cause to serve the 10 Day Notice on the Tenants. As the Tenants moved out of the rental unit, it is now moot to cancel the 10 Day Notice.

The Landlord served the 10 Day Notice on the Tenants. The Tenants disputed the 10 Day Notice pursuant to section of the 46(4) of the Act. The Tenants have demonstrated that the Landlord did not have cause to serve the 10 Day Notice on them. I find the Tenants are entitled to reimbursement of the filing fee for their application pursuant to section 72(1) of the Act.

### Conclusion

As the Tenants have moved out of the rental unit, there is no requirement for me to cancel the 10 Day Notice.

Pursuant to section 72(1) of the Act, I order the Landlords pay the Tenants \$100.00 to reimburse them for their filing fee.

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 1, 2022

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Residential Tenancy Branch