



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNR FFT OLC FFL

### **Introduction**

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the tenants attended the hearing by way of conference call, the landlord did not. I waited until 11:10 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m. The tenants were 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. During the hearing, I also confirmed from the online teleconference system that the tenants and I were the only ones who had called into this teleconference.

The tenants were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The tenants confirmed that they understood.

At the outset of the hearing, the tenants testified that the tenancy had ended on November 25, 2021 following a fire, and that they have since found new housing. The tenancy has not been reinstated since the fire. The tenants testified that they had filed this application on December 10, 2021 after they were served with a 10 Day Notice for Unpaid Rent on December 7, 2021.

**Residential Tenancy Policy Guideline 34** states the following about a Frustrated Tenancy:

*A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.*

*The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.*

*A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.*

*The Frustrated Contract Act deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15<sup>th</sup> day of the month, under the Frustrated Contracts Act, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.*

In consideration of the evidence and testimony before me, I find that this tenancy came frustrated on November 25, 2021. I find that the landlord had served the tenants with the 10 Day Notice after that date, despite this fact. I am not aware of any applications filed by the landlord at this time for dispute resolution in relation to this tenancy. As the tenancy became frustrated on November 25, 2021, and the tenancy has not been reinstated, I find that the 10 Day Notice served after the fact is of no force or effect. I find that the tenants' application is not required as this tenancy has now ended.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make any decisions in relation to the tenant's application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this 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: March 25, 2022

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Residential Tenancy Branch