



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 19, 2022 ("10 Day Notice"), pursuant to section 46; and
- cancellation of the landlord's One Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47.

The tenant did not attend this hearing, which lasted approximately 18 minutes. The landlord and his agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. and ended at 9:48 a.m. I monitored the teleconference line throughout this hearing. 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 the landlord, his agent, and I were the only people who called into this teleconference.

The landlord and his agent provided their names and spelling. The landlord confirmed the rental unit address and provided an email address for me to send a copy of this decision to him after the hearing.

The landlord stated that he was a property manager, and his agent was his assistant. He said that he had permission to represent the owner of the rental unit. The landlord's agent did not testify at this hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recording of this hearing by any party. During this hearing, the landlord and his agent both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord and his agent. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests.

The landlord confirmed receipt of the tenant’s application for dispute resolution and notice of hearing, by email. He said that he did not receive any evidence from the tenant, but he had a copy of the 10 Day Notice that he issued to the tenant.

The landlord confirmed that he did not submit any evidence for this hearing.

#### Preliminary Issue – Dismissal of Tenant’s Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the tenant, I order the tenant’s entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant’s application to cancel a 10 Day Notice and a 1 Month Notice, the landlord is entitled to an order of possession, provided that the notices meet the requirements of section 52 of the *Act*.

#### Preliminary Issue – Tenancy and Landlord

Neither party provided a copy of the 1 Month Notice so I could not determine whether it complies with section 52 of the *Act*. The landlord stated that he did not issue a 1 Month Notice to the tenant. Therefore, I cannot issue an order of possession to the landlord against the tenant, based on a 1 Month Notice, as none was issued, and none was provided as evidence for this hearing.

The tenant provided a copy of the 10 Day Notice for this hearing. The landlord confirmed that the notice is dated January 19, 2022, with an effective move-out date of February 1, 2022. He said that he served the notice to the tenant on January 19, 2022, by way of posting to his rental unit door. He stated that the notice indicates that rent of \$2,550.00 was due on January 1, 2022. He explained that the tenant failed to pay rent of \$850.00 per month for three months from November 2021 to January 2022, totalling \$2,550.00. He maintained that the tenant also failed to pay rent of \$850.00 per month for a further three months from February to April 2022, totalling \$2,550.00. He claimed that the tenant still resides in the rental unit, and he wants an order of possession against the tenant. He said that he did not want a monetary order against the tenant for unpaid rent.

The landlord stated that the owner of the rental unit is a numbered company. He did not provide the name of the owner during this hearing. He provided the name of a director and said that he could perform a title search during this hearing to provide additional information. He said that the owner purchased the rental unit from the previous owner. He claimed that the landlord ("LHHS") named in the written tenancy agreement, submitted by the tenant, is a tenant company who rented the entire building from the former owner and subleased the rental unit to the tenant. He said that the owner assumed this tenancy when it purchased the rental unit from the former owner in October 2021. He stated that he did not provide a copy of the purchase documents or any other documentary evidence because he has never had to prove ownership at a hearing. He said that he is the landlord, and he does not have to prove it or the ownership of the rental unit. He claimed that his testimony was sufficient, and he was an agent of the owner. He explained that the 10 Day Notice states his company's name, which is the property management company, and he signed the notice himself. He said that according to the tenancy agreement, the tenant began his tenancy on May 1, 2019 at a rent of \$850.00 due on the first day of each month and a security deposit of \$425.00 was paid by the tenant.

The landlord said that he could provide documents after this hearing, to establish the current landlord and owner of the rental unit. I informed him that I could not accept documentary evidence from him after this hearing, since the tenant would not have notice, would not have a chance to respond, and did not attend this hearing. I notified the landlord that he had ample time from the filing of this application on January 20, 2022, to this hearing date of April 29, 2022, a period of over three months, to submit these documents, prior to this hearing.

In his online RTB application, the tenant provided the following information in the details of his dispute (the name of the landlord company has been redacted and replaced with "LHHS" for confidentiality reasons, as required):

*"Because [LHHS] Lied to us that meaning all the tenants in his building and told us that we could stay where they told the new owner a different story which he will collaborate it's just a mess and [LHHS] has created the whole mess this can be resolved but we have nowhere to go because of course non-profit organization called [LHHS] I am not blaming the letting you landlord he has been kind to us but he is also losing money so I don't know what to do"*

*"3 months rent . Which he didn't want before. Now wants it. I would like to say I don't think the landlord is wrong it's [LHHS] that has made this mess they are in a court dispute [LHHS] did this on purpose it's I can I would love to talk in a court of law on all this"*

Subsection 2(1) of the Act sets out that:

*2 (1) Despite any other enactment..., this Act applies to tenancy agreements, rental units and other residential property.*

"Tenancy agreement" is defined in section 1 of the Act (my emphasis added):

*"tenancy agreement" means an agreement, whether written or oral, express or implied, **between a landlord and a tenant respecting possession of a rental unit,** use of common areas and services and facilities, and includes a licence to occupy a rental unit...*

"Landlord" is defined, in part, in section 1 of the Act (my emphasis added):

*"landlord", in relation to a rental unit, includes any of the following:*

***(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,***

***(i) permits occupation of the rental unit under a tenancy agreement, or***

***(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;***

*(c) a person, other than a tenant occupying the rental unit, who*

*(i) is entitled to possession of the rental unit, and*

*(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*

Section 6, in part, indicates that the *Act* is enforceable between a landlord and tenant (my emphasis added):

**6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.**

In order to have a tenancy agreement, there must be an intention by the parties to form the legal relationship of landlord and tenant. Without this intention, no enforceable agreement under the *Act* arises from the relationship.

According to the landlord, the owner of the rental unit is a numbered company. He did not provide the name of this company during this hearing. The name and signature of a tenant company (LHHS) under a sublease agreement, is indicated as a landlord on pages 1 and 6 of the tenancy agreement. The tenant did not provide a copy of the remaining 4 pages of the tenancy agreement (pages 2 to 5), only pages 1 and 6.

I find that the landlord failed to provide any documentary evidence for this hearing. The landlord did not provide a copy of a purchase agreement or any other documents to show that the current owner of this rental unit, a numbered company, owns the rental unit, and assumed this tenancy with the tenant, pursuant to a purchase made in October 2021, as per the landlord's testimony at this hearing. The only written tenancy agreement provided for this hearing is a sublease between a tenant company (LHHS) and the tenant. The 10 Day Notice names a different landlord company, which is a property management company, where the landlord is a property manager, but does not own the rental unit, according to the landlord. There is no documentation provided for this hearing, that this property management company manages the rental unit for the owner. I find that the tenant referenced the tenant company (LHHS) in his application, as providing incorrect information about rent to a new owner, currently in a court dispute. The tenant did not indicate the name of the new owner in his application.

Accordingly, on a balance of probabilities and for the reasons stated above, I cannot issue an order of possession to the landlord based on the 10 Day Notice, at this hearing. I find that the name and signature of the landlord on the notice does not comply with section 52 of the *Act*.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord is not issued an order of possession against the tenant.

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: April 29, 2022

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Residential Tenancy Branch