



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RP, RR

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On January 31, 2022 the Tenants applied for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated May 2, 2022 (the 10 Day Notice);
- an order for repairs made to the unit, having contacted the Landlords in writing; and
- an order to reduce rent for repairs, services, or facilities agreed upon but not provided.

The hearing was attended by the Tenants and the Landlords. The Landlords were accompanied by a legal advocate (NA). Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenants testified they served the Notice of Dispute Resolution Proceeding and a portion of their evidence on the Landlords in person on February 9, 2022, serving the rest of their evidence on February 10, 2022. The Landlords confirmed receiving the documents as described. I find the Tenants served the Landlords in accordance with section 89 of the Act.

Advocate NA submitted that the Landlords served their responsive evidence on the Tenants in person on April 25, 2022. The Tenants confirmed receiving the Landlords' evidence. I find the Landlords served the Tenants in accordance with section 88 of the Act.

### Preliminary Matter

The Residential Tenancy Branch Rule of Procedure 2.3 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.

As they are not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the Tenants' claims for orders for repairs and reduced rent.

### Issues to be Decided

- 1) Are the Tenants entitled to an order cancelling the 10 Day Notice?
- 2) If not, are the Landlords entitled to an order of possession and a monetary order for non-payment of rent?

### Background and Evidence

Those present agreed on the following particulars regarding the tenancy. It began on April 15, 2018; rent is \$1,200.00, due on the first of the month; and the Tenants paid a security deposit of \$600.00, which the Landlords still hold.

A copy of the 10 Day Notice was submitted as evidence by the Tenants in their January 31, 2022 application for dispute resolution. The Notice indicates:

- it was signed on May 2, 2022;
- the effective date is February 5, 2022; and
- the tenancy is ending as the Tenants have failed to pay rent in the amount of \$700.00 + \$300.00 due on January 1, 2022.

I asked the Landlord about the date the 10 Day Notice was signed, because it was obviously incorrect. The Landlord indicated the 10 Day Notice was signed on February 5, 2022, but sounded unsure.

The Landlord testified he served the 10 Day Notice on the Tenants in person on February 5, 2022, with a witness. In their application, the Tenants had submitted that they received the 10 Day Notice in person on January 26, 2022. In the hearing, Tenant

GS testified that she thought she had received the Notice on the same day indicated by the Landlord, February 5, 2022, but sounded uncertain.

The Landlords' submitted evidence included:

- a proof of service form, indicating that a 10 Day Notice to End Tenancy for Unpaid Rent was served on Tenant GS on February 19, 2022; and
- a 10 Day Notice to End Tenancy for Unpaid Rent dated March 20, 2022.

GS testified that the Tenants paid the rent in cash and had received rent receipts only since applying for dispute resolution, despite having requested receipts throughout the tenancy.

Landlord TG testified that he is 80 years old, and "very forgetful." TG submitted that with regard to providing rent receipts, "I have been lax in that area; I'm sorry." Landlord CG testified that she was often present when the Tenants were paying rent, and never heard them request a receipt.

Tenant GS testified that she had signed papers with "the Ministry," and that the Ministry had paid the Landlords \$400.00 towards GS's rent for March, April, and May 2022. GS testified that the Landlord had confirmed he had received the first \$400.00 a few months ago. GS testified that she assumed the Landlords were continuing to receive \$400.00 a month from the Ministry; GS submitted that if they are not, she needs to go back to the Ministry.

Landlord TG testified they are not receiving \$400.00 a month from the Ministry, and that he is 80 years old and "didn't remember she was doing this thing with the Ministry." The Landlords did not submit as evidence a ledger or other record of rent paid and owing.

Tenant SC testified that her disability claim was closed as she failed to complete a form, and is now having difficulty getting her claim reinstated. Tenant GS testified that the Tenants "have full intention of paying the rent."

## Analysis

Rule of Procedure 6.6 states:

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 the person making the application. However, in some situations the arbitrator may determine the onus of proof 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.

Section 46 (1) of the Act states 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 Tenants applied on January 31, 2022 to dispute a 10 Day Notice dated May 2, 2022, and allegedly served on February 5, 2022. The Landlord sounded unsure about the correct date the Notice was signed, stating it was February 5, 2022, which is 5 days after the Tenants submitted the 10 Day Notice as part of their application. In their application, the Tenants submitted that the Notice was served in person on January 26, 2022; then in the hearing, Tenant GS testified that she thought she received the Notice on February 5, 2022, but sounded uncertain.

The Landlords have not presented a notice with reliable information. Given that the Landlord claims to have served the Notice on the same date as the effective date, February 5, 2022, I find that the Landlord has failed to prove on a balance of probabilities that they complied with section 46 (1) by giving a notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenant receives the Notice.

I make no finding about the value of rent the Tenants may or may not owe.

In closing, I bring the parties' attention to section 26(2) of the Act, which states that a landlord must provide a tenant with a receipt for rent paid in cash.

Conclusion

The Tenants' application is granted. The 10 Day Notice is cancelled; the tenancy will continue until it is 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: May 05, 2022

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Residential Tenancy Branch