



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant: CNR, RP, LRE, FFT  
Landlord: OPU-DR, MNU-DR, FFL

### Introduction

This was a reconvened hearing to deal with two crossed Applications for Dispute Resolution filed under the *Residential Tenancy Act* (the Act).

The tenant applied on March 8, 2022, seeking:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 7, 2022 (the 10 Day Notice);
- an order for repairs made to the unit, having contacted the landlord in writing;
- an order to suspend or set conditions on the landlord's right to enter the rental unit; and
- the filing fee.

The landlord applied on March 25, 2022, seeking:

- an order of possession, having served the 10 Day Notice;
- a monetary order for unpaid rent and/or utilities, having served the 10 Day Notice; and
- the filing fee.

Those in attendance affirmed they would provide truthful information and were advised of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

### Procedural History

This hearing was reconvened after it was adjourned on June 21, 2022. This decision should be read in conjunction with the Interim Decision issued on June 22, 2022.

In the Interim Decision, given the prejudice to the landlord of delaying the matter further, I cautioned the tenant that the reconvened hearing would proceed as scheduled, and that if he was unable to attend, he must have a representative present.

### Service

The landlord testified that they served their Notice of Dispute Resolution Proceeding (NDRP) and evidence on the tenant by registered mail on March 30, 2022, and served the tenant with a second evidence package by registered mail on April 14, 2022. The landlord provided tracking numbers in support. I find the landlord served their NDRP and evidence on the tenant in accordance with section 89 of the Act, and find the tenant received the March 30, 2022 documents on March 31, 2022, and the April 14, 2022 documents on April 20, 2022. The tracking numbers are noted on the cover page of this decision.

### Preliminary Matters

#### 1. Tenant's request for another adjournment

The tenant did not have an agent attend the hearing. The person attending for the tenant stated he was "not the tenant's agent or representative ... just providing the tenant's message." Through their messenger, the tenant requested a further adjournment and objected to this matter proceeding until the tenant determines they are well enough and the new hearing date fits into their schedule.

A written statement from the tenant, read by the messenger, contained the following information relevant to reconvening the hearing today:

- the tenant fell ill with laryngitis on the day the hearing began, and is still ill, including suffering from partial hearing loss;
- the tenant received the landlord's Notice of Dispute Resolution Proceeding;
- the tenant opposes the short adjournment;
- the tenant requests the proceeding be adjourned for at least an additional 10 days;
- the tenant is unavailable July 12, 13, or 15–30, 2022;
- all rent payments are up to date; and
- the Interim Decision did not give him a chance to recuperate, and is unreasonable and biased.

Rule 7.9 states the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

The tenant provided no written submission from a regulated health professional to substantiate that they have a medical condition that prevents them from participating in the hearing. The tenant's messenger provided no oral submission to explain why the tenant was unable to obtain an agent to assist him with the reconvened hearing.

A further adjournment is unlikely to change the resolution of the central issue of whether the tenant has failed to pay rent and the landlord's Notice to End Tenancy is valid. Pursuant to Rule 6.6, the onus lies with the landlord to substantiate that the tenant has failed to pay rent and that the landlord has issued a Notice to End Tenancy that complies with the Act.

The tenant has neglected to demonstrate that a regulated health professional has determined he cannot participate in a hearing, and the tenant has not explained why he cannot have a representative participate and provide proof that the tenant is not in arrears with rent.

While adjourning the hearing to a future date may enable the tenant to be heard, Rule 7.3 states that 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. As noted above, the onus of proving the validity of the Notice to End Tenancy lies with the landlord. As the landlord alleges the tenant has not paid any rent since February 2022, it would be extremely prejudicial to the landlord to further delay the resolution of this dispute.

I find that it is fair for me to proceed to hear the landlord's evidence of the validity of the Notice in the absence of the tenant. I declined the tenant's request for another adjournment and proceeded with the hearing.

## 2. Unrelated issues

Rule 2.3 states that claims made in the application must be related to each other and arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. As the central issue in this dispute is unpaid rent and whether the tenancy will end for this reason, I dismiss, with leave to reapply, the tenant's claims for an order for repairs made to the unit and an order to suspend or set conditions on the landlord's right to enter the rental unit.

## 3. Amendment of landlord's monetary claim

Rule 4.2 states:

**4.2 Amending an application at the hearing** - In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Accordingly, I accept the landlord's request to amend their monetary claim to include rent for April–June 2022.

### Issues to be Decided

- 1) Is the landlord entitled to an order of possession?
- 2) Is the landlord entitled to a monetary order for unpaid rent and/or utilities?
- 3) Is the landlord entitled to the filing fee?

### Background and Evidence

While I have considered all the evidence before me, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my related findings are set out below.

The landlord provided the following particulars regarding the tenancy. It began on January 1, 2020; rent is \$1,624.00 a month, due on the first of the month; and the tenant paid a security deposit of \$800.00 and a pet damage deposit of \$800.00, which the landlord still holds.

The landlord submitted as evidence a tenancy agreement signed by the tenant. Item 26 of the addendum states: "With the exception of the first month's rent, the Tenant agrees to have the monthly rent payments paid through preauthorized electronic payments." The landlord also submitted a Notice of Rent Increase stating that as of January 1, 2022 the rent increased to \$1,624.00 a month.

The landlord submitted as evidence an [RTB Information Sheet on rent](#), noting it states "the tenancy agreement can specify the forms in which rent can be paid (cash, cheque, electronic transfer, etc.) ...as long as it's a term included in the agreement."

The landlord testified that after a disagreement between the parties, the tenant said, in a February 16, 2022 email submitted as evidence, that he would begin paying rent by direct deposit or by cheque, which the landlord informed the tenant would not be accepted, per the signed agreement that rent would be paid by electronic payments.

The leasing coordinator testified that on February 28, 2022 the tenant attended the leasing office and attempted to drop off cheques, including one to pay the March rent. The leasing coordinator testified that the tenant repetitively and forcefully insisted that she sign a document proffered by the tenant, stating that she had received the tenant's cheques. The leasing coordinator testified that she told the tenant she was not a signatory for the landlord and could not accept the cheques. The leasing coordinator testified that as the tenant was insistent, she was alone and physically cornered in the office, and fearful of further escalation, she signed the tenant's document, telling him that it does not mean his rent by cheque was accepted.

The landlord testified that the document the tenant asked the leasing coordinator to sign stated that the landlord would accept rent by cheque.

The landlord testified that upon learning of the interaction, he immediately emailed the tenant to tell him that they will not accept rent by cheque, and returned the tenant's cheques.

The landlord testified that the tenant has continued to provide cheques to pay the rent, and that the landlord has not deposited any of the tenant's cheques, rather returned them to the tenant.

The landlord testified the 10 Day Notice was served on the tenant by posting it to the door on March 7, 2022, and submitted as evidence a witnessed proof of service form and photo of the Notice posted to the door.

A copy of the 10 Day Notice is submitted as evidence. It is dated March 7, 2022, gives the address of the rental unit, states an effective date of March 19, 2022, states the

grounds for ending the tenancy, and is in the approved form. The 10 Day Notice is not signed by the landlord/agent.

The reason indicated on page 2 of the 10 Day Notice is that the tenant has failed to pay rent in the amount of \$1,766.00, due on March 1, 2022.

The landlord testified that the \$1,766.00 indicated on the 10 Day Notice is comprised of \$1,624.00 for rent, \$75.00 for parking, \$20.00 for shared amenities, and \$47.00 for utilities. The landlord testified they did not serve the tenant with a 30-day demand letter for utilities owed.

The landlord submitted as evidence a tenant ledger showing the tenant's March 2022 pre-authorized rent payment returned as NSF; the landlord also submitted a Monetary Order Worksheet, dated March 22, 2022, indicating that the tenant owes \$1,624.00 for March rent.

The landlord testified that the tenant now owes unpaid rent as follows:

<b>Month</b>	<b>Rent</b>	<b>Rent paid</b>	<b>Monthly outstanding</b>
March 2022	\$1,624.00	\$0.00	\$1,624.00
April 2022	\$1,624.00	\$0.00	\$1,624.00
May 2022	\$1,624.00	\$0.00	\$1,624.00
June 2022	\$1,624.00	\$0.00	\$1,624.00
<b>Total</b>			<b>\$6,496.00</b>

The landlord testified they are also seeking to recover unpaid amounts for parking and shared amenities.

### Analysis

The tenancy agreement signed by the landlord and tenant requires the tenant to pay rent by means of electronic transfer; this is in compliance with the Act.

I find the tenant's March 2022 rent payment was returned for non-sufficient funds and that the tenant did not pay rent for March 2022.

Therefore, the landlord was entitled to issue the 10 Day Notice.

I find the landlord served the 10 Day Notice on the tenant by posting it to the door on March 7, 2022, in accordance with section 88 of the Act. As the tenant filed to dispute the Notice on March 8, 2022, I find this is also the date the Notice was received.

Section 46(4) of the Act provides that upon receipt of a 10 Day Notice, the tenant may, within 5 days, pay the overdue rent, or, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant failed to cancel the Notice on March 8, 2022, I find the tenant disputed the Notice within the statutory deadline.

Although the landlord did not sign the 10 Day Notice, I find the landlord's name listed on the Notice sufficient for meeting the requirement of 52(a), which states the notice must be signed and dated by the landlord.

I accept the landlord's affirmed testimony and documentary evidence that, in accordance with the signed addendum, the tenant agreed to and was required to pay rent by electronic payment, but failed to do so beginning March 2022.

In accordance with section 46 of the Act, I find the landlord had cause to issue the Notice and is entitled to an order of possession.

The corrected effective date of the Notice is March 20, 2022. As the landlord testified that the tenant still resides in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, June 27, 2022.

I accept the landlord's affirmed testimony and documentary evidence that the tenant has failed to pay rent in the amount of \$1,624.00 a month for March through June 2022, for an overdue amount of \$6,496.00.

I decline to consider unpaid utility charges, as the landlord testified they did not serve the tenant with a 30-day demand letter for them, as required by section 46(6) of the Act. I decline to consider unpaid charges for parking or shared amenities, as the landlord has not applied for them.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is successful in their application, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the landlord to retain the tenant's \$800.00 security deposit and \$800.00 pet damage deposit in partial satisfaction of the amount owing.

I find the landlord is entitled to a monetary order as follows:

Overdue rent	\$6,496.00
Filing fee	\$100.00
Less deposits	-\$1,600.00
<b>Owed to landlord</b>	<b>\$4,996.00</b>

### Conclusion

The tenant's claims to cancel the Notice to End Tenancy and recover their filing fee are dismissed.

The landlord is granted an order of possession which will be effective two days after it is served on the tenant.

The landlord is granted a monetary order in the amount of \$4,996.00.

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: June 30, 2022

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Residential Tenancy Branch