



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, OLC, RP, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenants applied on April 7, 2022 for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent, received March 2, 2022;
- an order cancelling a One Month Notice to End Tenancy for Cause, received March 2, 2022;
- an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement; and
- recovery of the filing fee.

The tenants amended their application on May 6, 2022, seeking:

- an order cancelling a second 10 Day Notice to End Tenancy for Unpaid Rent, served April 2, 2022;
- an order cancelling a second One Month Notice to End Tenancy for Cause, served March 10, 2022;
- an order for repairs made to the unit or property, having requested them from the landlord in writing; and
- an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord indicated she had received the tenants' Notice of Dispute Resolution Proceeding and evidence, but not the amendment form. The tenants testified they did not serve the amendment form on the landlord.

The tenants confirmed they received the landlord's responsive evidence.

### Preliminary Matters

#### *Amendments*

The following notices to end tenancy are submitted as evidence:

- a 10 Day Notice dated March 2, 2022;
- a One Month Notice dated March 9, 2022;
- a 10 Day Notice dated April 2, 2022;
- a 10 Day Notice dated May 17, 2022;
- a 10 Day Notice dated June 2, 2022; and
- a 10 Day Notice dated July 4, 2022 (the July 10 Day Notice).

In the hearing, the tenants indicated they wished to amend their application to dispute all the notices to end tenancy served by the landlord. As the landlord had served six notices to end tenancy on the tenants, I considered Residential Tenancy Branch Rule of Procedure 4.2:

#### **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.

As the tenants had applied to dispute notices to end tenancy served by the landlord, I advised the parties I found it reasonable to permit the tenants to amend their application in the hearing to dispute all of the notices to end tenancy. The landlord did not raise an objection to the amendment.

I accept the tenants' amendments to dispute the additional notices to end tenancy served by the landlord. I do not accept the tenants' amendments seeking an order for repairs or for the landlord to comply with the Act, regulation, and/or the tenancy

agreement as they were not served on the landlord, and because they do not pertain to the notices to end tenancy.

The tenants' application was amended to capture the additional notices to end tenancy issued by the landlord, but this does not extend the time limit to dispute the notices. The tenants provided no explanation as to why they did not dispute the additional notices in time.

### *Related Issues*

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 it is not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the tenants' application for an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement.

### Issues to be Decided

- 1) Are the tenants entitled to an order cancelling the notices to end tenancy?
- 2) If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?
- 3) Are the tenants entitled to the filing fee?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began July 1, 2015; rent is \$870.00, due on the first of the month; and the tenants paid a security deposit of \$400.00 which the landlord still holds.

A copy of the July 10 Day Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date of July 14, 2022, states the grounds for ending the tenancy, and is in the approved form.

The Notice states the tenancy is ending as the tenants failed to pay rent in the amount of \$3,480.00 due on July 1, 2022.

The parties agreed the July 10 Day Notice was served on the tenants in person on July 4, 2022.

The landlord testified that the tenants owe outstanding rent as follows:

Month	Rent	Rent paid	Monthly outstanding
April 2022	\$870.00	\$0.00	\$870.00
May 2022	\$870.00	\$0.00	\$870.00
June 2022	\$870.00	\$0.00	\$870.00
July 2022	\$870.00	\$0.00	\$870.00
August 2022	\$870.00	\$0.00	\$870.00
<b>Total</b>			<b>\$4,350.00</b>

A payment history document is submitted as evidence.

The tenant testified they paid rent for April and May 2022, but did not present documentary evidence in support. The tenant testified they paid the April rent to the landlord, at the rental unit, by giving her \$870.00 in cash, but were not provided with a receipt. The tenant testified they paid the May rent to the landlord by giving her \$870.00 in cash on May 22, 2022.

The tenant testified they always paid rent in cash, and were never given a receipt. The landlord testified that the tenants were always given receipts for their cash payments, and described the receipt book. Receipts are not submitted as evidence.

In the handwritten submissions from the tenants, there are references to having received receipts as follows:

- A document dated "March 17/2022 ... also April 7/2022" includes: "We have never really received receipts, when we do its not on the 1st of the month."
- A document dated "March 17/2022 also April 3/2022" refers to the landlord coming to collect the rent, and includes: "Also come on the 1st or att least mark the receipt for the first not when she comes date."
- A document illegibly dated *April 7/2022* and marked "#1" in the upper left corner refers to the landlord coming for the rent on days other than the first of the month, and includes: "We have been asking for her to at least mark what

receipts she does actually give us (when she does), date for the 1st not the date she comes.”

[Reproduced as in original.]

The tenant testified that they did not pay rent for June, July, or August 2022. The tenant testified they withheld rent for June and July because of repairs that were needed to the unit. The tenant testified they did not have emergency repairs made to the unit.

### Analysis

Section 33 of the Act allows tenants to deduct the amount from rent that they spend on emergency repairs, under specific conditions. The tenant testified they withheld rent for June and July 2022 because repairs to the unit were needed. The tenant testified they did not have emergency repairs made to the unit. Therefore, I find the tenants were not entitled to withhold rent to cover the cost of emergency repairs.

Section 46(4) of the Act provides that upon receipt of a 10 Day Notice, the tenants may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Based on the undisputed testimony of the parties, I find the July 10 Day Notice was served on the tenants in person on July 4, 2022, in accordance with section 88 of the Act.

I find that the landlord's July 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date of the notice, states the reason for ending the tenancy, and is in the approved form.

I find that the tenants have failed to file an application for dispute resolution within 5 days of July 4, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 10 Day Notice, July 14, 2022, and must vacate the rental unit.

The tenant testified that they had “never” been given a receipt for rent paid in cash; however their written submissions contain at least three references to being provided a rent receipt. This calls into question the tenant's credibility.

Therefore, I prefer the landlord's version of events with regard to the payment of rent, and accept the landlord's verbal testimony and supporting rent history document indicating that the tenants did not pay rent for April through August, 2022.

In accordance with section 55 of the Act, I find that the landlord is entitled to an order of possession and a monetary award for outstanding rent in the amount of \$4,350.00.

As the tenants still reside 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, August 5, 2022.

As the tenancy is ending, I find it is unnecessary for me to consider the remainder of the notices to end tenancy.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are unsuccessful in their application, I decline to award them the filing fee.

In accordance with section 72 of the Act, I allow the landlord to retain the tenant's \$400.00 security deposit in partial satisfaction of the amount owing. The landlord is entitled to a monetary order for \$3,950.00 ( $\$4,350.00 - \$400.00 = \$3,950.00$ ).

### Conclusion

The tenants' application is dismissed.

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

The landlord is granted a monetary order in the amount of \$3,950.00.

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: August 18, 2022

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Residential Tenancy Branch