



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 322 CAMBIE PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **RP, CNR**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- An order requiring the landlord to carry out repairs pursuant to section 32;

The tenant attended with the advocate JW (“the tenant”). The agent TJ attended for the landlord (“the landlord”). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained. No issues of service were raised. I find each party served the other in compliance with the *Act*.

### *Delivery of Decision*

Each party confirmed their email address to which a copy of the Decision will be sent.

### *Preliminary Issue – Severance*

After looking at the issues before me at the start of the hearing, I determine that the most pressing and related issues before me deal with whether the tenancy continues.

Section 2.3 of the *Rules of Procedure* states that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As a result, I exercise my discretion to dismiss, **with leave to reapply**, the application by the tenant for repairs.

The only issue before me is the application by tenant to cancel the 10-Day Notice.

#### Issue(s) to be Decided

Is the application to cancel the Notice granted? Is the landlord granted an Order of Possession?

#### Background and Evidence

The tenant and landlord submitted different versions of events during the hearing. The landlord submitted no documentary evidence.

The tenant submitted a copy of the tenancy agreement indicating the rent was \$600.00 monthly payable on the first and she paid a security deposit of \$300.00.

The tenant submitted the first page of the 3-page document 10-Day Notice dated May 4, 2022. The tenant filed an Application for Dispute Resolution on May 4, 2022.

The landlord did not submit a copy of the Notice.

The tenant stated that she is in receipt of disability income and the rent payment of \$600.00 is paid directly to the landlord. The tenant submitted a copy of a form showing direct payment to the landlord for May 2022.

The landlord denied receipt for several months rent. However, the landlord did not submit a copy of the tenant ledger or any other evidence of the amount owing.

#### Analysis

The burden to support the reason to end the tenancy rests with the landlord.

Rule 6.6 provides:

## 6.6 The standard of proof and onus of proof

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.**

(Emphasis added)

In an application where a tenant applies to cancel a Notice to End Tenancy, the onus of proof is on the landlord:

## 7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof. **One instance when the respondent bears the onus of proof is where a tenant applies to cancel a Notice to End Tenancy. In such a case, the hearing will begin with the landlord presenting first unless the arbitrator decides otherwise.**

(Emphasis added)

The landlord did not submit a copy of the Notice to End Tenancy and I find the landlord has failed to establish compliance with section 52 as to form and content of the Notice.

The landlord has submitted no supporting documentary evidence to establish the amount of rent owing. I find the landlord has failed to establish what rent, if any, is outstanding.

Accordingly, I find the landlord has failed to meet the onus of proof. Therefore, I grant the tenant's application and I cancel the 10-day Notice.

The 10-Day Notice is vacated, and the tenancy shall continue until ended according to the agreement or this Act.

Conclusion

The application is granted. The 10-Day Notice is vacated and is of no force or effect.

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: September 02, 2022

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Residential Tenancy Branch