



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNL, FF

### Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied on May 4, 2022 for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the landlord, an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) and to recover the cost of the filing fee.

The tenants, the tenants' advocate, and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlord confirmed receipt of the tenants' application and evidence. The landlord did not file any evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to cancellation of the 10 Day Notice, a 2 Month Notice, and recovery of the cost of the filing fee?

Background and Evidence

No tenancy agreement was filed in evidence. At first I was told there was no written tenancy agreement and then later, I was told there had been a written tenancy agreement with a previous owner of the residential property. The parties clarified that the tenants did not have a tenancy agreement with the landlord here.

I heard testimony that the tenancy began on July 2, 2021, for a monthly rent of \$1,400 and a security deposit of \$700. The tenants live in the lower portion of a home owned and occupied by the landlord in the upper portion. The tenants submitted that they have an agreement with the landlord to make bi-monthly payments for rent, on the 15<sup>th</sup> and 30<sup>th</sup> of the month. The landlord said he agreed the tenants could pay the monthly rent in bi-monthly payments, but did not say whether it was on the 15<sup>th</sup> and 30<sup>th</sup>. A text message filed by the tenants indicated the landlord accepted their request to make bi-monthly payments.

The tenants asserted that the landlord did not serve them with a 2 Month Notice, and that he only sent them a text message on May 1, 2022 telling them a family member was coming from another country and they had to vacate. Filed in evidence was a copy of the text message.

The landlord submitted that he did serve the tenants with a 2 Month Notice. The landlord said that he had a cousin moving to the country.

As to the 10 Day Notice, the Notice was dated May 4, 2022, for an effective move-out date of May 15, 2022, listing unpaid rent of \$2,100 owed as of May 1, 2022.

The landlord said that the tenants paid half the monthly rent for April, and none for May, at the time the Notice was issued, which is why he listed the amount of \$2,100. Since the Notice was issued, the tenants have paid \$700 on May 9 and \$700 on May 20, 2022 and made other payments in June 2022. The landlord submitted that the tenants have not paid rent in July, August or September.

As to the lack of evidence, the landlord said this was his first time in dispute resolution.

The tenants said they did pay the monthly rent in full on May 9, 2022, then later changed that statement to having paid \$1,400 on May 9, 2022, because the second payment for May was not yet due. The tenant submitted evidence of 3 bi-weekly rent payments, from February, March and April 2022.

The tenant confirmed not paying the monthly rent after June 2022. The tenant explained that they thought the tenancy ended in July 2022 because of the tenancy agreement they had with their first landlord.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

#### *2 Month Notice –*

As to the tenants' request to cancel a 2 Month Notice, there was no evidence to show that the landlord served a 2 Month Notice on the RTB form. A text message was the only evidence submitted that shows the landlord asked the tenants to vacate due to family moving in. A text message is not sufficient to end the tenancy. Therefore, there was nothing for me to enforce or cancel and I decline this request.

#### *10 Day Notice –*

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

When a tenant disputes a 10 Day Notice to end the tenancy, the landlord must provide sufficient evidence to support the Notice, and in this case, the evidence must show that the tenant owed the monthly rent total of \$2,100 on May 1, 2022 when the Notice was issued.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The parties both agree the tenants were given permission to make bi-monthly rent payments.

I have reviewed the Notice and find it does not comply with section 52 *[form and content of notice to end tenancy]*.

While the form is on the standard RTB form, I find the landlord listed unpaid monthly rent which was not yet due. The landlord included on the Notice of May 4, 2022, the second bi-monthly rent payment which was not due until May 15, 2022.

Additionally, the parties provided contradictory testimony as to what monthly rent was paid in May and beyond. As well, neither party provided documentary evidence to show rent payments paid or received in May or beyond.

There is no evidence from the landlord reflecting payments, such as receipts, accounting records, or tenant ledger sheets. As the landlord bears the burden of proof to support the Notice, I find the landlord failed to provide such. The landlord confirmed that the tenants made rent payments in May 2022, but failed to provide evidence as to the amount of the payments.

Due to the landlord's insufficient evidence to support that the tenants owed the amount of rent listed on the 10 Day Notice, I find this Notice is not valid.

I therefore **order** that the 10 Day Notice, dated May 4, 2022, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

As I have cancelled the Notice, I grant the tenants recovery of their filing fee of \$100.

The tenants are authorized to deduct \$100 from a future monthly rent payment as a one-time rent reduction to satisfy this monetary award.

It is clear the tenants have not paid the monthly rent as owed under the tenancy agreement and the landlord is at liberty to serve the tenants with another 10 Day Notice seeking to end this tenancy.

The tenants are informed that they owe all monthly rent due through the date of this hearing, as the tenancy has not ended as they failed to vacate the rental unit and that they should pay any overdue rent **immediately**. I have not made this an order as there was insufficient evidence as to the exact amount that would be owed.

The landlord is informed that he may not seek to end a tenancy using as reason that a cousin wants to occupy the rental unit.

Both parties are encouraged to review their legal rights and obligations under the Act and may contact staff at the RTB should they have questions.

### Conclusion

As there was no evidence that the landlord served the tenants with a 2 Month Notice, I decline to make a decision on this request.

I grant the tenants' application seeking cancellation of the landlord's 10 Day Notice, due to insufficient evidence that the monthly rent in the amount listed was owed.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 15, 2022

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Residential Tenancy Branch