



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, RR

### Introduction

This hearing was scheduled to convene at 9:30 a.m. on September 13, 2022 concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities and an order reducing rent for repairs, services or facilities agreed upon but not provided.

The landlord attended the hearing prepared to respond to the tenant's application, and gave affirmed testimony, however the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call. Therefore, I dismiss the tenant's application without leave to reapply.

During the course of the hearing, the landlord indicated that none of the landlord's evidentiary material had been provided to the tenant. Any evidence that a party wishes to rely on must be provided to the other party, even if the other party already has a copy; it's important for a landlord and a tenant to know what evidence is before me. Since the landlord has not done so, I decline to consider any of the landlord's evidence.

### Issue(s) to be Decided

Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

The landlord testified that this fixed-term tenancy began on October 1, 2020 and reverts to a month-to-month tenancy after September 30, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$3,100.00 per month was originally payable under the tenancy agreement, which also specifies that after the first year, rent increases by \$100.00 per month. The tenant is currently in arrears of rent the sum of \$9,600.00 for 3 months. At the outset of the tenancy the landlord collected a security deposit from the

tenant in the amount of \$1,550.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that on July 12, 2022 the landlord's spouse served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by handing it to the tenant's adult son. It is dated July 12, 2022 and contains an effective date of vacancy of July 22, 2022 for unpaid rent in the amount of \$3,200.00 that was due on July 1, 2022.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. The law also states that where I dismiss a tenant's application to cancel a notice to end the tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form.

In this case, the tenancy agreement contains a term that is not lawful, increasing rent by \$100.00 per month after the first year. Also, no rent increases were permitted for the year 2021. Therefore, I am not satisfied that the landlord has established that the tenant failed to pay rent in the amount of \$3,200.00 that was due on July 1, 2022, and I decline to grant an Order of Possession.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

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 13, 2022

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Residential Tenancy Branch