



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46;
2. A Monetary Order for compensation - Section 67;
3. An Order for a rent reduction - Section 65;
4. An Order for the provision of services and facilities - Section 65;
5. An Order restricting the Landlord’s access - Section 70;
6. An Order allowing a lock change - Section 70;
7. An Order for the Landlord’s compliance - Section 62; and
8. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms receipt of the Tenants’ application for dispute resolution, notice of hearing and evidence. The Landlord confirms that they did not provide any evidence for this hearing.

### **Preliminary Matter**

The Tenants’ claims, other than the claim to cancel the notice to end tenancy and for recovery of the filing fee, are in relation to the Landlord’s actions during the tenancy.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the Tenants’ claims for compensation,

rent reduction, services and facilities, the landlord's entry and the Landlord's compliance are not related to the matter of whether the tenancy will end, I dismiss these claims with leave to reapply.

Issue(s) to be Decided

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The Tenant is unsure of when the tenancy started. The Landlord states that the tenancy, under written agreement, started in October 2019. The Tenant states that rent of \$1,250.00 was payable on the 15<sup>th</sup> day of each month. The Tenant states that this rent was increased but is unsure when and to what amount. The Landlord states that rent was increased to \$1,268.75 effective August 15, 2022. The Parties agree that at the outset of the tenancy the Landlord collected \$625.00 as a security deposit. The Witness states that they personally gave the Landlord all rents payable on a monthly basis from May to and including November 2022.

The Parties agree that a 10-day notice to end tenancy for unpaid rent (the "Notice") was given to the Tenants. The Tenant states that the Notice was for unpaid rent of \$1,250.00 for the month of May 2022. The Witness provides evidence of rental payments for May to November 2022 inclusive. The Landlord confirms that the May and June 2022 rents were paid in full on June 15, 2022 and that all subsequent rents have since been fully paid to and including November 2022 rent. The Landlord states that the Tenants have also overpaid the rent by a sum. The Landlord confirms that no receipts for "use and occupancy only" were given to the Tenants for the rent payments. The Tenant argues that by accepting the rent payments past the issuance of the Notice the Landlord has reinstated the tenancy.

### Analysis

Section 46(1) of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Policy Guideline #11 provides as follows:

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant. For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue.

Although neither Party provided a copy of the Notice and although the Tenant’s testimony on details of the Notice and tenancy terms was confused and vague, given the Landlord’s evidence that rents have been continually paid since the Notice was given, to and including November 2022 without issuance of a receipt “for use and occupancy only” I find on a balance of probabilities that the Landlord reinstated the tenancy and that no rents are owed to the Landlord to and including November 2022. I therefore cancel the Notice and the tenancy continues. As the Tenants have been successful with their claim to cancel the Notice, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee and the Tenants may deduct this amount from future rent payable in full satisfaction of this claim.

### Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenants an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 23, 2022

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Residential Tenancy Branch