



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**TT: CNR**

**LL: OPU-DR MNU-DR FFL**

### Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant made one application (“Tenant’s Application”) for

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent pursuant to section 46 of the Act.

The Landlords made one application (“Landlords’ Application”) for:

- an Order of Possession for non-payment of rent and/or utilities pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent and utilities in the amount of \$5,760.00 pursuant to sections 55 and 67; and
- authorization to recover the filing fee of the Landlords’ Application from the Tenant pursuant to section 72.

The Tenant did not attend this hearing scheduled for 9:30 am, although I left the teleconference hearing connection open for the entire hearing, which ended at 10:07 am, in order to enable the Tenant to call into this teleconference hearing. One of the two Landlords (“AD”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that AD and I were the only ones who called into this teleconference.

AD stated the Landlords received the Notice of Dispute Resolution Proceeding for the Tenant's Application ("Tenant's NDRP") by email on July 14, 2022. As AD acknowledged the Landlords received the Tenant's NDRP, I find the Landlords were sufficiently served with the Tenant's NDRP pursuant to section 71(2)(b) of the Act on July 14, 2022.

AD stated the Landlords did not receive any evidence from the Tenant for this proceeding.

Preliminary Matter – Service of Landlord's Notice of Dispute Resolution Proceeding

AD stated the Landlords served the Notice of Dispute Resolution Proceeding for the Landlords' Application and their evidence (collectively the "Landlords' NDRP Package") on the Tenant's door on June 15, 2022. Section 89 of the Act states:

- 89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
  - (a) by leaving a copy with the person;
  - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
  - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
  - (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
  - (f) by any other means of service provided for in the regulations.
- (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
  - (b) by sending a copy by registered mail to the address at which the tenant resides;
  - (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
  - (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
  - (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
  - (f) by any other means of service provided for in the regulations.
- (3) A notice under section 87.5 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

As the Landlord served the Landlords' NDRP Package on the Tenant's door, it was served in accordance with the provisions of section 89(2). As such, the Landlords' NDRP was only valid for service in respect of a claim by the Landlords for an Order of Possession under section 55 of the Act. Based on the foregoing, I dismiss the Landlords' claim for a monetary order for unpaid rent and/or utilities. I find the Landlord's evidence, that was part of the Landlord's NDRP Package, was served in accordance with the provisions of section 88 of the Act.

#### Preliminary Matter – Correction of Rental Address in Tenant's Application

At the outset of the hearing, I noted the address of the rental unit stated in the Tenant's Application and the Landlords' Application and asked the Landlord if the residential property was a single-family residence. AD stated the Landlords lived on the upper floor and the Tenant lived in a basement unit. I noted the rental address stated on the Applications did not specify the Tenant was occupying a basement unit. AD requested that I amend the Tenant's Application and the Landlords' Application to indicate that the rental unit is a basement unit.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* ("Rules") states:

## **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.

Based on the undisputed testimony of the Landlord, I find the rental unit occupied by the Tenant is located in the basement of the civic address provided in the Applications. I find the Tenant could reasonably have anticipated the Landlords would request an amendment to the Tenant's Application and Landlords' Application to amend the rental address to include "Basement" as part of the address of the rental unit. As such, I order the Tenant's Application and Landlords' Application be amended to add "Basement" to the rental address.

### **Preliminary Matter – Effect of Tenant's Non-Attendance at Hearing**

Rules 7.1, 7.3 and 7.4 of the RoP state:

#### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenant did not attend the hearing within 10 minutes of its commencement, pursuant to Rule 7.3, I dismiss the Tenant's Application without leave to reapply. As the Tenant was not present at the hearing, I will not consider any of the evidence submitted by the Tenant in advance of the hearing when adjudicating the Landlords' Application.

### Issues to be Decided

Are the Landlords entitled to:

- an Order of Possession?
- recover the filing fee for the Landlords' Application?

### Background and Evidence

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

The Landlords submitted into evidence a copy of the tenancy agreement between the Landlords and Tenant. The tenancy agreement stated the tenancy commenced on July 15, 2021, for a fixed term ending July 15, 2022, with rent of \$1,550.00 payable on the 1<sup>st</sup> day of each month. The Tenant was to pay a security deposit of \$775.00 by July 15, 2021.

Neither the Landlord nor the Tenant submitted a copy of the Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities. I requested the Landlord to upload a copy of the Ten Day Notice but the Landlord was unable to upload it to the service portal of the Residential Tenancy Branch. I then asked the Landlord to describe the contents of the Ten Day Notice. It became evident that the Landlords served the Tenant with a handwritten note that stated the Landlords were ending the tenancy. AD acknowledged the Landlords did not serve the Tenant with a completed and signed Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities on a Form RTB-30.

## Analysis

Sections 46(1) through 46(4) of the Act state:

- 46(1) 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*.
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.

Section 46(2) states a notice under section 46 must comply with section 52. Section 52 of the Act states:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
  - (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
  - (e) *when given by a landlord, be in the approved form.*

[emphasis in italics added]

Section 52(3) requires that, in order to be effective, a notice to end tenancy must be in writing and must, when given by a landlord, be in the approved form. AD acknowledged the Landlords served the Tenant with a handwritten notice and did not serve the Tenant with a Form RTB-30. As such, the notice served by the Landlords did not comply with section 52 of the Act. Based on the foregoing, I find the notice was not effective. As such, the tenancy continues until ended in accordance with the Act.

The Landlords' Application is dismissed in its entirety without leave to reapply. The Landlords may call the Contact Centre of the Residential Tenancy Branch to obtain information on the correct procedures to seek the end of a tenancy for unpaid rent and/or utilities and seeking a monetary order for unpaid rent and/or utilities.

### Conclusion

The notice served on the Tenant by the Landlords was not effective. The tenancy continues until ended in accordance with the Act.

The Landlords' Application is 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: November 7, 2022

---

Residential Tenancy Branch