



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 2-Tone Romain Holdings and  
[tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

Tenant: CNC-MT, MNDCT, RR, RP, PSF, LRE; CNR-MT  
Landlord: OPR, OPC, MNRL, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed applications regarding a residential tenancy dispute.

The tenant applied on July 7, 2022 for:

- an order cancelling a One Month Notice to End Tenancy for Cause, noting she needs more time to dispute the Notice;
- compensation for monetary loss or other money owed;
- a rent reduction for repairs, services, or facilities agreed upon but not provided;
- repairs made to the unit or property, having contacted the landlord in writing;
- an order for the landlord to provide services or facilities required by the tenancy agreement or law; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit or site.

The tenant applied on October 5, 2022 for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 14, 2022 (the 10 Day Notice), noting she needs more time to dispute the Notice.

The landlord applied on October 12, 2022 for:

- an order of possession, having issued the 10 Day Notice;
- an order of possession, having issued a One Month Notice;
- a monetary order for unpaid rent, and
- the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenant testified she had not served her July 7, 2022 Notice of Dispute Resolution Proceeding (NDRP) and evidence on the landlord. However, the landlord testified they had received a copy of the NDRP by registered mail on July 28, 2022, but no evidence. I find the NDRP sufficiently served on the landlord on July 28, 2022 in accordance with section 71 of the Act. I will not be considering the tenant's evidence from this application as it was not served on the landlord.

The tenant testified she had not served her October 5, 2022 NDRP and evidence on the landlord. However, the landlord submitted they were willing to waive service. Other than page 1 and 2 of the 10 Day Notice, no other evidence was submitted by the tenant.

The tenant confirmed she received the landlord's NDRP and evidence.

### Preliminary Matters

#### *Naming of Parties*

With the agreement of the parties, and in accordance with section 64(3)(c) of the Act, I amend the applications to reflect the landlord's full legal name, as confirmed by the landlord and found on the cover page of this decision.

#### *Related Matters*

The Residential Tenancy Branch Rules of Procedure 2.3 states:

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they are not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the tenant's claims for:

- compensation for monetary loss or other money owed;
- a rent reduction for repairs, services, or facilities agreed upon but not provided;
- repairs made to the unit or property, having contacted the landlord in writing;

- an order for the landlord to provide services or facilities required by the tenancy agreement or law; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit or site.

#### Issues to be Decided

- 1) Is the tenant entitled to more time to dispute the One Month Notice?
- 2) If so, is the tenant entitled to an order cancelling the One Month Notice?
- 3) If not, is the landlord entitled to an order of possession?
- 4) Is the tenant entitled to more time to dispute the 10 Day Notice?
- 5) If so, is the tenant entitled to an order cancelling the 10 Day Notice?
- 6) If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?
- 7) Is the landlord entitled to the filing fee?

#### Background and Evidence

The parties agreed on the following particulars regarding the tenancy. Rent is \$850.00 a month, due on the first of the month; and the tenant paid a security deposit of \$425.00, which the landlord still holds. The tenant had initially testified that she paid a security deposit of \$400.00, then stated that the landlord was correct that the security deposit was \$425.00. The parties agreed that the tenant's rent had been subsidized, with the tenant paying \$450.00 and the government paying \$400.00.

The landlord testified that the tenancy began on April 1, 2020, and that she did not collect a pet damage deposit from the tenant. The tenancy agreement submitted as evidence does not record the payment of a pet damage deposit.

The tenant questioned whether the tenancy agreement submitted as evidence was the one she signed, and testified that the tenancy began on March 1, 2020 and that she thought that her advocate had paid a pet damage deposit of \$250.00.

The landlord submitted a copy of the 10 Day Notice as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form.

The 10 Day Notice states the tenancy is ending as the tenant failed to pay rent in the amount of \$450.00, due on June 1, 2022.

The landlord testified the 10 Day Notice was served on the tenant by posting it to the door on September 14, 2022, and the tenant confirmed she received the Notice on the same day.

The tenant testified that she needed more time to dispute the Notice because she has ADHD and therefore has difficulty understanding and completing the required forms and assembling the hearing packages. The tenant testified she had checked with multiple resources in search of an advocate to assist her, but one of the places has closed, and the advocate she managed to speak to was so busy they could only give her a 1-hour consultation, which the tenant testified left her more confused than before. The tenant testified that she had also been very ill, was hospitalized for about a month, still has significant health problems, and must visit the hospital daily for treatment.

The landlord asked to respond to the tenant's application for more time, stating that the tenant had said the same things in a recent hearing, resulting in it being "cancelled." The landlord submitted they did not wish for the hearing to be delayed.

The landlord testified that the tenant owes outstanding rent as follows:

<b>Month</b>	<b>Rent portion to be paid by the tenant</b>	<b>Rent paid by the tenant</b>	<b>Monthly balance outstanding</b>
June 2022	\$450.00	\$0.00	\$450.00
July 2022	\$450.00	\$450.00	\$0.00
August 2022	\$450.00	\$0.00	\$450.00
September 2022	\$450.00	\$450.00	\$0.00
October 2022	\$450.00	\$0.00	\$450.00
November 2022	<b>\$850.00</b>	\$0.00	\$850.00
		<b>Total</b>	<b>\$2,200.00</b>

The landlord testified that the tenant had made a rent payment of \$400.00 for June 2022, which the landlord returned, for two reasons. First, because the landlord had served the tenant with a different notice to end tenancy with a "vacate date" at the end of May, the landlord returned the tenant's June rent payment, anticipating that the tenant would move out by May 31, 2022. The landlord testified that they later withdrew the notice, as it had been served incorrectly, and the tenant did not move out, and did not pay the June rent. The landlord testified that the second reason they returned the

tenant's June 2022 rent payment was because it was incomplete: the tenant's payment was \$50.00 short.

The landlord testified that in November 2022 the government stopped supplementing the tenant's rent, so the tenant needed to pay the landlord \$850.00 in rent for November.

The tenant agreed with the landlord's testimony that the June 2022 rent was not paid. The tenant testified that she was not able to speak to the August and October 2022 rent payments as she did not have her documents with her. The tenant explained that her daily hospital treatment had taken longer than expected, so she had not been able to get home, where her documents were, before the commencement of the hearing.

The tenant testified that the government had stopped payment on the November 2022 rent subsidy because she did not have water in the rental unit. The tenant testified that she had pursued the matter, and that the government would continue paying the rent subsidies, but she did not know when they would resume.

The tenant agreed with the landlord's testimony that she had not made a November 2022 rent payment.

The landlord submitted as evidence a letter to the tenant dated October 6, 2022, stating that they are accepting payment for use and occupancy only, and that the tenant owes \$450.00 for each of June, August, and October 2022, for a total of \$1,350.00. Also submitted as evidence is a photocopy of the government subsidy cheque which was returned to the landlord because payment was stopped.

### Analysis

The tenant testified that she needs more time to dispute the Notice as she was not able to get the assistance she needed from an advocate, and because she has been very ill, including being hospitalized for about a month, and receiving ongoing care requiring daily hospital visits. My decision regarding whether the tenant is entitled to more time to dispute the 10 Day Notice must be governed by the Act, which at section 66 states:

**Director's orders: changing time limits**

**66** (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

The Residential Tenancy Branch [Policy Guideline 36, Extending a Time Period](#), provides guidance on the Act's intention regarding "exceptional circumstances"; it states: "The word 'exceptional' implies that the reason for failing to do something at the time required is very strong and compelling." As an example of what might be considered an exceptional circumstance, the guideline cites a situation in which the party was in the hospital at all material times, stating:

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

Considering the Act and the Policy Guideline, and the fact that the tenant has submitted no testimony or documentary evidence to demonstrate that their need for more time to dispute One Month Notice arises from exceptional circumstances, such as hospitalization with an inability to contact another person to act on their behalf, I must determine that the reasons provided by the tenant are not sufficient to meet the high bar required. I therefore cannot grant the tenant more time to apply to dispute the 10 Day Notice.

Pursuant to section 46(1) of the Act, 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. A notice under this section must comply with the form and content provisions of section 52.

Sections 46(4) and (5) of the Act state:

- (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.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

Based on the testimony of those present, I find the landlord served the tenant the 10 Day Notice on September 14, 2022, in accordance with section 88 of the Act, and that the tenant received it on the same day.

As it is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for the notice, and is in the approved form, I find the 10 Day Notice meets the form and content requirements of section 52 of the Act.

I find that the tenant did not file an application for dispute resolution within 5 days of September 14, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) to have accepted that the tenancy ended on the effective date of the 10 Day Notice, September 27, 2022, and must vacate the rental unit.

Therefore, I find the landlord is entitled to an order of possession.

As the tenant still resides in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, November 28, 2022.

Based on the landlord's testimony and documentary evidence, I find the tenant owes unpaid rent in the amount of \$2,200.00, which she must pay the landlord, pursuant to section 55(4) of the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is successful in his application, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the landlord to retain the tenant's \$425.00 security deposit in partial satisfaction of the amount owing.

I have not applied a pet damage deposit to the amount owed to the landlord as I am not convinced one was paid by the tenant at the beginning of the tenancy. The tenant did not provide certain testimony regarding the payment of the security and pet damage deposits. The tenant had initially testified she paid a security deposit of \$400.00, then submitted that the landlord's testimony that a security deposit of \$425.00 was paid by

the tenant was correct. The tenant submitted that she “thought” that her advocate had paid the landlord a pet security deposit of \$250.00. The tenant sounded uncertain as to whether the advocate had paid the deposit, and the tenant provided no documentary evidence in support. The landlord testified that the tenant did not pay a pet damage deposit, and the landlord submitted as evidence a copy of the tenancy agreement, which does not record payment of a pet damage deposit.

I find the landlord is entitled to a monetary order as follows:

Unpaid rent	\$2,200.00
Filing fee	\$100.00
Less security deposit	-\$425.00
<b>Owed to landlord</b>	<b>\$1,875.00</b>

As the tenancy has ended, I have not considered the One Month Notice.

#### Conclusion

The landlord’s application is granted.

The landlord is granted an order of possession which will be effective two days after it is served on the tenant.

The landlord is granted a monetary order in the amount of \$1,875.00.



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: December 14, 2022

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Residential Tenancy Branch