



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR-MT, MNRT, MNDCT, LRE, OLC

### Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 to cancel a 10-Day Notice to End Tenancy signed on August 1, 2022 (the “10-Day Notice”);
- an order pursuant to s. 66 for a time extension to dispute the 10-Day Notice;
- a monetary order pursuant to s. 67 for repayment for the cost of emergency repairs;
- a monetary order pursuant to s. 67 for compensation for loss or other money owed;
- an order pursuant to s. 70 restricting the Landlord’s right of entry; and
- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement.

V.S. appeared as the Landlord. The Tenant did not attend the hearing, nor did someone appear on the Tenant’s behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend the hearing for their own application, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord acknowledged receipt of the Tenant’s application.

### Tenant's Claim and vacating the rental unit

In the general course, applicants bear the burden of proving their claims, though there are instances in which respondents bear the evidentiary burden. In this case, the Tenant, as applicant, bears the burden of proving their claims under s. 66, 67, 70, and 62. In all applications in which a tenant disputes a notice to end tenancy, the respondent landlord bears the burden of proving the notice was issued in compliance with the *Act*. Here, that means the Landlord bears the burden of proving the 10-Day Notice was properly issued.

Dealing first with those claims in which the Tenant bears the burden, I find that by failing to attend the hearing and making submissions, the Tenant failed to discharge their burden to prove their claims. Accordingly, the following claims are dismissed without leave to reapply:

- an order pursuant to s. 66 for a time extension to dispute the 10-Day Notice;
- a monetary order pursuant to s. 67 for repayment for the cost of emergency repairs;
- a monetary order pursuant to s. 67 for compensation for loss or other money owed;
- an order pursuant to s. 70 restricting the Landlord's right of entry; and
- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement.

As the Landlord bears the burden on the claim under s. 46 to cancel the 10-Day Notice, I obtained submissions from the Landlord on this issue. At the outset of the hearing, I was advised by the Landlord that the Tenant had vacated the rental unit. Though the Landlord was uncertain on the date this occurred, he says that a representative of his took possession of the rental unit in early December 2022.

As the Tenant has vacated the rental unit, the issue of whether the 10-Day Notice is enforceable is moot. The tenancy is over. Given this, I dismiss the claim to cancel the 10-Day Notice without leave to reapply. As the Landlord already has possession of the rental unit, I decline to make an order pursuant to s. 55(1) for an order of possession.

The final issue to be dealt with is that of unpaid rent. The Landlord says the Tenant failed to pay rent from August 1, 2022 to December 1, 2022, such that there is a claim for those 5 months. Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the

formal requirements of s. 52, then the Director must grant an order for unpaid rent. In accordance with Policy Guideline 3, an order for unpaid rent is limited to rent owed during the tenancy and does not include compensation for an overholding tenant.

I have reviewed the 10-Day Notice and find that it does not comply with the formal requirements under s. 52 of the *Act*. Though it contains many of the elements required, the Landlord failed to list the address for the rental unit under the section in which it states "I, the Landlord, give you 10 days' notice to move out of the rental unit/site located at:". Simply put, the 10-Day Notice lacked that relevant detail such that it is not a proper notice as per s. 46(2) of the *Act*.

The practical effect of this omission is that the Landlord may not be granted an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. To be clear, the Landlord is still permitted to advance a claim for unpaid rent, though he will have to do it as his own application.

### Conclusion

I dismiss the Tenant's claims under ss. 62, 66, 67, and 70 without leave to reapply.

The Tenant vacated the rental unit such that the issue of the enforceability of the 10-Day Notice is moot. The claim under s. 46 to cancel the 10-Day Notice is dismissed without leave to reapply.

As the 10-Day Notice fails to comply with the formal requirements of s. 52 of the *Act*, I decline to make an order for unpaid rent under s. 55(1.1) in the Landlord's favour. The Landlord is at liberty to advance their claim for unpaid rent, but must file his own application to do so.

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 15, 2022

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Residential Tenancy Branch