



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNR, OLC, FFT**

### **Introduction**

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
2. An Order for the Landlord to comply with the Act, Regulation, and tenancy agreement pursuant to Section 62(3) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the 10 Day Notice on the Tenant on September 2, 2022 by placing the document in her mailbox. The Tenant applied to amend her claim for dispute resolution to include cancelling the 10 Day Notice on September 6, 2022. I find that the 10 Day Notice was deemed served on the Tenant on September 5, 2022 pursuant to Sections 88(f) and 90(d) of the Act.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on August 23, 2022 by Canada Post registered mail (the “NoDRP package”). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on August 28, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenant served her Amendment to her claim by Canada Post registered mail on September 6, 2022. The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the Amendment. I find that the Landlord was deemed served with the Tenant’s Amendment on September 11, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Landlord testified that he personally served his evidence on the Tenant on July 20, 2022. The Tenant did not confirm receipt of the Landlord’s evidence, and the Landlord did not provide a proof of service for his evidence. I find that the Landlord’s evidence was not served on the Tenant in accordance with the Act. I decline to review the Landlord’s uploaded evidence for this matter.

### Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord’s 10 Day Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
4. Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on November 1, 2016. The fixed term ended on October 31, 2017, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,000.00 payable on the first day of each month. A security deposit of \$500.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$1,000.00 in outstanding rent on September 1, 2022. The effective date of the 10 Day Notice was September 11, 2022.

The Landlord testified that the Tenant had provided him post-dated rent cheques up to the end of 2022. When September 1 came, the Landlord could not find the post-dated cheques the Tenant had left him. He served the 10 Day Notice. Sometime later, he found the cheques and cashed the September cheque to cover the rent for that month. The Landlord confirmed that rent is completely up to date.

The Tenant asked if the Landlord would remove shelving and other items recently placed in the covered patio area that she has been allowed to use since move-in. I note some of the items left as storage are jerry cans with liquid in them. The Landlord said they could come to an agreement, then shortly after appeared to change his mind. The Tenant has not pointed out what Section of the Act, Regulation and/or tenancy agreement with which she wants the Landlord to comply.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The Landlord's 10 Day Notice was deemed served on September 5, 2022. The Tenant applied for dispute resolution for the 10 Day Notice on September 6, 2022. Sometime later, the Landlord found the post-dated rent checks and cashed the September check to cover that month's rent. I find that the Landlord found the post-dated rent cheques left to him and September's rent was paid within five days after the Tenant received the 10 Day Notice pursuant to Section 46(4)(a) of the Act. Accordingly, I cancel the 10 Day Notice, and the tenancy will continue until ended in accordance with the Act.

The Tenant sought an Order for the Landlord to comply with the Act, Regulation and tenancy agreement; however, she has not pointed out what Section of the Act, Regulation or provision of the tenancy agreement she seeks to uphold. This part of the claim began because the Landlord recently put up shelving and storage of items in the covered patio area that the Tenant had free use of before. Unfortunately, the Landlord is not amenable to working to an agreement of how this common area of the residential property can be shared. The Tenant is disappointed but relinquished this part of her claim. I dismiss this part of the Tenant's claim.

As the Tenant is successful in their claim to cancel the 10 Day Notice, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

### Conclusion

The Tenant's application to cancel the 10 Day Notice is granted.

The Tenant's application for an Order that the Landlord comply with the Act, Regulation and tenancy agreement is dismissed.

The Tenant may withhold \$100.00 from next month's rent to recover her application filing fee.

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: January 04, 2023

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Residential Tenancy Branch