



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CORNERSTONE PROPERTIES  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR CNC

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated August 26, 2022, and to cancel a 10-Day Notice to End Tenancy for unpaid rent or utilities (the 10 Day Notice), dated May 13, 2022.

The Tenants and the Landlords attended the hearing and provided affirmed testimony. All parties were given a full opportunity to be heard, to present evidence and to make submissions.

The Tenants filed two applications and were given two separate Notice of Dispute Resolution Proceeding document packages that they were supposed to serve to the Landlords. The Landlords confirmed receipt of the Tenants' first Notice of Dispute Resolution Proceeding package which they filed on September 2, 2022. I find this first package was sufficiently served. However, with respect to the second Notice of Dispute Resolution Proceeding package, relating to an application they filed on October 18, 2022, I note the Tenants stated they sent this package via email to the Landlords and they also stated they dropped it off in person to the Landlords but were unclear about when this was done. The Landlords denied getting this package either via email, or in person, as the Tenants assert.

The Landlords deny ever agreeing to serve each other via email, so they expected things to be served in one of the traditional methods. I find there is insufficient evidence showing that they parties agreed, expressly, and in writing, that documents could be served via email. As such, I am not satisfied the Tenants sufficiently served their second Notice of Dispute Resolution Proceeding package via email. Further, the Tenants also provided an unclear explanation as to when they served their second Notice of Dispute

Resolution Proceeding package in person, and the Landlord denied that it was done. I find there is insufficient evidence showing that the Tenants served their second Notice of Dispute Resolution Proceeding package either by email, in person, or any method allowed under the Act. As such, I dismiss the Tenants' second application, in full, with leave to reapply. However, this does not extend any statutory timelines under the Act.

The Landlords stated that they provided their evidence to the Tenants by posting it to their door on January 17, 2023. The Tenants acknowledge getting the package but do not recall what day it was received. Pursuant to section 90 of the Act, I find this package is deemed served 3 days after it was posted, on January 20, 2023. I note the Rules of Procedure (Rule 3.15) states that the respondent must ensure their evidence is received by the other party no later than 7 days before the hearing. In this case, the Landlord's evidence was served late. Further, there is insufficient evidence to show that any of the Landlord's evidence was "new and relevant" and why they could not have served it sooner, and in accordance with Rule 3.15. As such, I find the Landlord's evidence is late, without reason, and is not admissible.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the tenant entitled to have the 1-Month Notice or the 10 Day Notice cancelled?
  - If not, is the landlord entitled to an Order of Possession?

#### Background and Evidence

Both parties agree that rent is due on the first of the month and was set at \$1,218.00 per month from January 1, 2022, until December 31, 2022. Rent was increased to \$1,242.36 as of January 1, 2023.

#### *10 Day Notice*

The Tenants applied to cancel a 10 Day Notice dated and signed by the Landlord on May 13, 2022. A copy of this 10 Day Notice was provided into evidence. It states that as of January 5, 2022, \$521.32 was unpaid. The Tenants were very unclear about when this 10 Day Notice was received, and were unaware that they had provided a copy of

the Notice into evidence. The Landlords stated they served this 10 Day Notice to the Tenants by posting it to their door on May 13, 2022.

The Landlords were asked to provide a breakdown as to how this amount was calculated, and they provided an unclear explanation as to what was paid, and why this amount listed on the 10 Day Notice was allegedly due as of January 5, 2022 (considering rent is due on the first of the month). The Tenants deny that they owe any rent, and feel they have paid all that was due/overdue within the acceptable time frame.

The Landlords referred to a rent ledger in their possession, but this was not provided into evidence. The Landlords stated that the Tenants are still behind on rent to this date, but they did not provide any breakdown as to what was paid, and when, since the 10 Day Notice was issued.

### *1 Month Notice*

On their application, the Tenants indicated that they received the 1 Month Notice on August 29, 2022. A copy of the 1 Month Notice was provided into evidence. It lists the following grounds for ending the tenancy:

- *Tenant has not done required repairs of damage to the unit/site.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The Landlords left the details of cause section blank. In the hearing, the Landlords stated that they do not feel the Tenants have done the required repairs to the flooring, or the stove, and the Tenants do not keep the unit clean enough.

The Tenants assert they have cleaned up and repaired anything significant, and only have a couple of small things to repair on the stove which will take time to order the parts.

### Analysis

#### *10 Day Notice*

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under

this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

The Tenants were very unclear about when the 10 Day Notice was received. The Landlords stated that they posted it to the Tenants' front door on May 13, 2022. Pursuant to section 90 of the Act, I find the Tenants are deemed served with this 10 Day Notice on May 16, 2022, 3 days after it was posted.

The Landlords were asked to explain how the amount on the 10 Day Notice (\$521.32) was calculated, and why the 10 Day Notice stated this amount was due on January 5, 2022, when rent was due on the 1<sup>st</sup>. The Landlords provided an unclear explanation and breakdown as to the amounts due and amounts paid, and why the dates on the 10 Day Notice were different than the date rent is normally due. I note the Landlords failed to provide any sort of ledger or written breakdown as to what was paid, and when, and what is currently owed. Given the unclear explanation in the hearing, and the lack of documentary evidence showing a proper breakdown of the amounts, I find the Landlord has failed to sufficiently demonstrate that the Tenants owed the amount noted on the 10 Day Notice issued in May 2022. As such, I hereby cancel the May 13, 2022, 10 Day Notice and it is of no force or effect.

The Landlords are granted leave to apply for monetary compensation for any related unpaid rent, and they are also at liberty to re-issue a new 10 Day Notice, with the current amount owing. The Landlord may wish to provide evidence or an explanation to corroborate the amounts owing at that time.

### *1 Month Notice*

The Notice indicates the following reasons for ending the tenancy in the second page:

- *Tenant has not done required repairs of damage to the unit/site.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

Section 52 of the Act provides for the form and content of notices to end tenancy. Among other things, in order for a notice to end tenancy to be effective it must be in the approved form when given by a landlord.

The Director has the authority to approve forms pursuant to section 10 of the Act, which provides:

### **Director may approve forms**

- 10** (1) The director may approve forms for the purposes of this Act.
- (2) Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

The current Notice that is in the approved form provides a section entitled “Details of Cause”. In this section, the form states:

Include any dates, times, people or other information that says who, what, where or when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).

In this case, I failed to fill in a section called the “details of cause” on the second page of the Notice. This field is included to allow tenants to properly understand the basis for the Notice.

I find that without the details of cause clearly spelled out, this may be prejudicial to the Tenants and their ability to understand the basis for it, and effectively respond to all of these points upon application.

In keeping with the principles of natural justice, a person receiving an eviction notice is entitled to know the reason(s) for its issuance so that they may adequately respond or prepare a defence. In this case I find that the landlord’s failure to complete the Details of Cause section of the approved form is prejudicial to the Tenants.

In light of the above, I grant the Tenant’s request that I cancel the 1 Month Notice.

Accordingly, the tenancy continues at this time and until such time it legally ends.

As the Tenants were substantially successful with their application, I grant the recovery of the filing fee against the Landlord. The Tenants may deduct the amount of \$100.00 from 1 (one) future rent payment.

### Conclusion

The 1 Month Notice issued on August 26, 2022, and the 10 Day Notice issued on May 13, 2022, have been cancelled and the tenancy continues at this time.

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: January 25, 2023

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Residential Tenancy Branch