



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding CAPREIT LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, CNC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (Application) filed by the Tenant under the *Residential Tenancy Act* (the Act) on November 7, 2022, seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month notice);
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. on March 17, 2023, and was attended by the Tenant, who provided affirmed testimony. The line remained open for the 26-minute duration of the hearing; however, no one attended on behalf of the Landlord. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Tenant was advised that inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Tenant was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Tenant was also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As

no one attended the hearing on behalf of the Landlord, I confirmed service of the documents as explained below.

The Tenant testified that the Notice of Dispute Resolution Proceeding (NODRP), which contains a copy of the Application and the Notice of Hearing, was sent to the office address for the corporate Landlord, which I have noted on the cover page of this decision, by registered mail on December 1, 2022, and received the following day. The Tenant provided me with the registered mail tracking number, which I have also recorded on the cover page of this decision. As a result, and in the absence of any evidence or testimony to the contrary, I find that the Landlord was served with the NODRP on December 2, 2022. Residential Tenancy Branch records show that the NODRP was emailed to the Tenant on November 22, 2023, for service by November 25, 2022. Although I find that the NODRP was served outside of the timeline set out under section 59(3) of the Act and rule 3.1 of the Rules of Procedure, I nevertheless find it sufficiently served for the purposes of the Act on December 2, 2022, pursuant to section 71(2)(b) of the Act as I find that this date is well in advance of the hearing date and that the Landlord was therefore unlikely to have been prejudiced by this late service.

### Preliminary Matters

I noted that the name of the Landlord in the tenancy agreement, a corporation, does not match the name of the Landlord listed in the Application, an individual. The Tenant stated that the individual named is an agent for the corporation named as the Landlord in the tenancy agreement. With the Tenant's consent, I amended the Application to reflect that the individual named is an agent for the corporate Landlord.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

Is the Tenant entitled to cancellation of the 10 Day Notice?

If not, is the Landlord entitled to an Order of Possession based on either Notice to End Tenancy?

Is the Tenant entitled to recovery of the Filing fee?

### Background and Evidence

The Tenant stated that they do not agree with the reasons for ending the tenancy given by the Landlord. The Tenant testified that they received the 10 Day Notice on approximately November 3, 2022, and that although they do not specifically recall when they received the One Month Notice, they believe it was disputed on time.

### Analysis

Based on the affirmed testimony of the Tenant and as there is no evidence or testimony to the contrary, I am satisfied that a tenancy to which the Act applies exists between the parties and that the Tenant disputed the Notices to End Tenancy on time.

Ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove that they had sufficient cause under the Act to issue the notice. As no one attended the hearing on behalf of the Landlord to provide any evidence or testimony for consideration, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that they have cause to end the tenancy under either section 46 or 47 of the Act. As a result, I grant the Tenant's Application seeking cancellation of both the 10 Day Notice and the One Month Notice.

As the Tenant was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. As per their request at the hearing, the Tenant is authorized to withhold \$100.00 from the next months rent payable under the tenancy agreement in recovery of this amount, pursuant to section 72(2)(a) of the Act.

### Conclusion

I order that the One Month Notice and the 10 Day Notice are cancelled and of no force or effect.

Pursuant to section 72(2)(a) of the Act the Tenant is authorized to withhold \$100.00 from the next months rent payable under the tenancy agreement in recovery of the 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: March 17, 2023

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Residential Tenancy Branch