



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **CNR, LRE, LAT, OLC**

### **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 to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act;
3. An Order for authorization to change the locks to the rental unit pursuant to Section 70 of the Act; and,
4. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act.

The hearing was conducted via teleconference. The Landlords and one 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 Landlords served the Tenant with the 10 Day Notice on November 30, 2022 by posting the notice on the Tenants' door. The Tenant confirmed receipt of the 10 Day Notice on November 30, 2022. I find the 10 Day Notice was served on the Tenants on November 30, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant testified that she served the Landlords with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on December 7, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant uploaded one Canada Post registered mail 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 Landlords confirmed receipt of the NoDRP package. I find that the Landlords were deemed served with the NoDRP package five days after mailing them, on December 12, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlords testified that they served the Tenants with their evidence by email on April 1, 2023, then later by dropping the documents off at the Tenants' home. The Landlords stated they gave their evidence to the Tenants' minor son and asked him to give it to his mother. The Tenant stated she neither received the Landlords' evidence package from her minor son, nor through her email account. The Landlord sent lots of emails, so the Tenant is unclear which email the Landlords are talking about.

Pursuant to Section 88 of the Act, the Landlords' evidence that is required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) *by leaving a copy with the person;*
- (b) *if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) *by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) *if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) *by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) *by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*
- (g) *by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;*

- (h) *by transmitting a copy to a fax number provided as an address for service by the person to be served;*
- (i) *as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (j) *by any other means of service provided for in the regulations.*

The Landlords do not have a signed form #RTB-51-Address for Service which would permit them to serve the Tenants by email as provided in the regulations. Also, the Landlords cannot leave served packages with minor children, this is not permitted by the Act. As the Landlords did not serve the Tenants in one of the above ways, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure that parties know the case being made against them, are given the opportunity to reply, and have the right to have their case heard by an impartial decision maker: *AZ Plumbing and Gas Inc. (Re)*, 2014 CanLII 149849 (BC EST) at para. 27. Procedural fairness requirements in administrative law are not technical, but rather functional in nature. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 (CanLII) at para. 65. I find that service of the Landlords' evidence was not effected and it would be administratively unfair to the Tenants to proceed like the Tenants do have all the Landlords' evidence. The Landlords can provide viva voce evidence about the documents they want to rely on in this matter.

### Preliminary Matter

#### *Unrelated Claims*

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants had indicated different matters of dispute on their application, the most urgent of which is the claim to cancel the 10 Day Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request to cancel the 10 Day Notice. The Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this decision.

### Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's 10 Day Notice?
2. If the Tenants are unsuccessful, are the Landlords entitled to an Order of Possession and a Monetary Order for unpaid rent?

### 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 September 1, 2022. The Landlords permitted the Tenants to move in on August 29, 2022. The fixed term ends on August 31, 2023. Monthly rent is \$2,850.00 payable on the 29th day of each month. A security deposit of \$1,425.00 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 Tenants owed \$2,850.00 in outstanding rent on November 29, 2022. The effective date of the 10 Day Notice was December 9, 2022.

The Landlords requested that the rent be paid by 1 p.m. on November 29, 2022. The Tenants paid the outstanding rent on November 30, 2022. The Landlords confirmed receipt of December's rent at 6:45 a.m. on November 30, 2022.

### 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.

Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

***Landlord's notice: non-payment of rent***

- 46** (1) *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.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (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.*

...

The Tenants were served with the 10 Day Notice on November 30, 2022. I find the 10 Day Notice complies with the form and content requirements of Section 52 of the Act.

The Landlords told the Tenants that they wanted the rent payment by 1 p.m. on November 29, 2022. The Tenants have until midnight on the day rent is due to fully pay their rent. The Tenants paid the outstanding rent on November 30, 2022 as evidenced by their bank notification uploaded into documentary evidence. So, although late, rent was paid within the five days specified in Section 46(4)(a) of the Act. Therefore, the 10 Day Notice has no effect. The Landlords' 10 Day Notice is canceled and the tenancy will continue until ended in accordance with the Act.

**Conclusion**

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

The Tenants' remaining claims are dismissed with leave to re-apply.

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: April 06, 2023

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Residential Tenancy Branch