



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding HCT Construction  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, RR, OLC

### Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice”), pursuant to section 46;
2. an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to sections 27 and 65; and,
3. an order requiring the landlord to comply with the Act, regulation or tenancy agreement, pursuant to section 62.

JA (the “tenant”) appeared at the hearing.

The hearing was adjourned at the tenant’s request from April 3, 2023, to April 4, 2023. However, on April 3, 2023, prior to the matter being adjourned, the tenant provided detailed affirmed testimony that they served the owner of the corporate landlord (the “Owner”) with the Notice of Dispute Resolution Proceeding on Sunday, March 12th, 2023, in person. The tenant directed my attention to the 10-Day Notice to End Tenancy which lists the corporate landlord. The tenant testified that the Owner attended the tenant’s residence to introduce them to the new caretaker of the property. Upon meeting the new caretaker, the tenant advised the Owner that they had something for them and handed the Owner the Notice of Dispute Resolution Proceeding. The tenant testified that the Owner was aware of this hearing. The tenant confirmed the above noted testimony at the reconvened hearing.

Based on the undisputed affirmed testimony of the tenant and based on section 89(1)(a) of the Act, I find that the required documents were served on the corporate landlord on March 12, 2023.

The tenant was given full opportunity under oath to be heard, to present evidence and to make submissions. The tenant confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

The landlord did not appear at the hearing. The hearing proceeded in the landlord's absence pursuant to Rule of Procedure 7.3.

### Preliminary Matter

During the hearing the tenant stated that the person listed on their application is no longer the caretaker of the building. The tenant directed my attention to the 10-Day Notice which lists the previous caretaker and the corporate landlord. Based on the testimony of the tenant and section 64(3)(a) of the Act, I have amended the name of the landlord listed on the tenant's application to the name of the corporate landlord.

### Issue(s) to be Decided

- Is the tenant entitled to an order cancelling the 10-Day Notice?
- Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?
- Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation, or tenancy agreement?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all of the details of their submissions and evidence are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified that they have lived in their current rental unit for approximately three months. The tenant testified that they had been living in another rental unit in the same building for approximately three to four months prior to moving to their current rental unit. Monthly rent is \$750.00 payable on the first of each month. The tenant testified that they have paid \$315.00 toward a \$375.00 security deposit which the landlord continues to hold in trust.

The tenant testified that they received the 10-Day Notice on February 26, 2023. The tenant is seeking an order for cancellation of the 10-Day Notice.

The tenant testified that they were initially living in another unit while the landlord fixed up the current rental unit; however the repairs are not complete. The tenant stated that the landlord has come into the rental unit and taken all of their stuff out, left it for a day and then put it back, but no repairs were done. The tenant stated that the landlord broke the toilet seat and a light during this time. The tenant also testified that the kitchen sink leaks, and the fridge does not close properly which has caused the tenant's milk to go bad.

The tenant is seeking an order to reduce rent for repairs and an order that the landlord comply with the Act, regulation or tenancy agreement.

### Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") states that 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. In most circumstances the onus is on the person making the application. However, in some situations the Arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on the above, in this case, the onus is on the landlord to prove on a balance of probabilities that the tenancy should be ended for the reason identified on the 10-Day Notice. However, the landlord did not appear at the hearing to make submissions or present evidence. On that basis, I find the landlord has not met the onus which is upon them to prove the reason that the tenancy should be ended. Therefore, I find in favour of the tenant and order that the 10-Day Notice is cancelled.

Based on Rule 6.6 of the Rules of Procedure the onus is on the tenant to prove the reason they are entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided and an order requiring the landlord to comply with the Act, regulation or tenancy agreement. I have considered the tenant's testimony and I find that the tenant has not provided sufficient evidence to establish either of these claims. On that basis, I find the tenant's applications based on sections 27, 65 and 62 of the Act are dismissed without leave to reapply.

Conclusion

For the reasons outlined above, I grant the tenant's application for cancellation of the 10-Day Notice. The tenancy will continue.

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: April 05, 2023

---

Residential Tenancy Branch