



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Topaz Developers  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNRT, MNDCT, DRI, ERP, RP, AS

### Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "Act") for the following orders:

- cancellation of the 10-Day Notice for Unpaid Rent (the "Notice") pursuant to section 46;
- a monetary order for the cost of emergency repairs to the manufactured home site pursuant to sections 33 and 67;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order regarding the tenant's dispute of a rent increase by the landlord pursuant to section 41;
- an order for the landlord to make emergency repairs for health or safety reasons pursuant to sections 33 and 62;
- an order for the landlord to make repairs to the rental unit pursuant to sections 32 and 62; and,
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to sections 34 and 65.

AL (the "tenant") appeared at the hearing.

The tenant provided affirmed testimony that they served the landlord with the Notice of Dispute Resolution Proceeding and evidence package by registered mail on April 8, 2023. In support of this, the tenant provided a Canada Post Tracking Number.

Based on the affirmed testimony and evidence of the tenant and based on sections 89 of the Act, I find that the required documents were served on the landlord on April 8,

2023, and are deemed to have been received by the landlord on April 13, 2023, the fifth day after they were sent by registered mail.

The tenant was given full opportunity under oath to be heard, to present evidence and to make submissions.

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

### Preliminary Matters

The tenant applied for several orders in addition to cancellation of the 10-Day Notice. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in an application must be related to each other and authorizes that an Arbitrator may dismiss unrelated claims with or without leave to reapply. Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, I find the most important issue to determine is whether or not the 10-Day Notice should be cancelled. I find the tenant's additional claims are unrelated to this issue. I have addressed my findings regarding the tenant's additional claims below under the heading "Conclusion".

When questioned about the name of the landlord, the tenant testified that she believes there is a corporate landlord and a landlord. The 10-Day Notice issued to the tenant includes the name of the corporate landlord. Based on the testimony and evidence of the tenant and pursuant to section 64 of the Act, I have amended the tenant's application to include the names of both landlords.

### Issue to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### 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 arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified that the tenancy started approximately four years ago. Monthly rent is currently \$2,075.00 payable on the first of the month. The landlord collected a security deposit in the amount of \$1,000.00 and a pet deposit in the amount of \$1,000.00.

The tenant testified that they are still residing at the property and seeking cancellation of the 10-Day Notice.

### Analysis

Rule 6.6 of the Residential Tenancy Branch 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 burden 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.

### Conclusion

For the reasons outlined above, the tenant's additional claims are dismissed with leave to reapply.

I grant the tenant's application for cancellation of the 10-Day Notice. The tenancy will continue until such time as it is ended in accordance with the Act.

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: May 09, 2023

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Residential Tenancy Branch