



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, MNRT, MNDCT, DRI, RPP, OLC

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on December 22, 2022 seeking

- a. a cancellation of the Landlord’s 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”)
- b. compensation for emergency repairs they paid for
- c. compensation for their own monetary loss
- d. to dispute a rent increase that is above the amount allowed by law
- e. a return of their personal property
- f. a reduction in rent for repairs not undertaken by the Landlord
- g. the Landlord’s compliance with the legislation and/or the tenancy agreement.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 27, 2023. In the conference call hearing, I explained the process and provided the attending parties – both the Landlord and the Tenant -- the opportunity to ask questions.

### Preliminary Matter – Tenant’s service of Notice of Dispute Resolution Proceeding and evidence

At the start of the hearing, the Tenant described printing a copy of the Notice of Dispute Resolution Proceeding and handing it to the Landlord 3 or 4 days after they received it from the Residential Tenancy Branch. The Landlord stated they received this document on December 22 or December 23.

The Tenant provided evidence to the Residential Tenancy Branch for this hearing. When I asked in the hearing, the Tenant stated they did not provide the same evidence to the Landlord. This was because the evidence itself was “just pictures that the Landlord had already”.

In response, the Landlord confirmed they received no evidence from the Tenant and the Landlord was “totally left guessing”, meaning they “had to use imagination” on what this hearing was about, and how to prepare for it.

The *Residential Tenancy Branch Rules of Procedure* (Rule 3.1) specifies that the applicant (here, the Tenant) must serve the respondent (here, the Landlord) with copies of “any other evidence submitted to the Residential Tenancy Branch directly . . . in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*]”.

I find the Tenant did not provide evidence to the Landlord as required in any kind of hearing, to ensure fairness. It is not proper for an arbitrator to consider evidence that the Landlord did not have the chance to review or respond to. Rule 3.11 states that “If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.”

For the reasons above, I exclude all of the evidence provided by the Tenant to the Residential Tenancy Branch. I consider none of the material provided by the Tenant to the Residential Tenancy Branch for this hearing.

#### Preliminary Matter – Landlord’s evidence

The Landlord prepared evidence for this hearing. The Tenant stated they received this evidence on April 20, 2022. This was one week in advance of the hearing. The timeline for the respondent (here, the Landlord) to provide evidence to the applicant (here, the Tenant) is “not less than seven days before the hearing”. The Landlord complied with this timeline; therefore, I give their evidence full consideration if necessary and relevant.

Preliminary Matter – unrelated issues

At the outset, I advised both parties of the immediate issues concerning the end-of-tenancy notice issued by the Landlord. This is (as indicated by the Tenant on their Application to the Residential Tenancy Branch) the 10-Day Notice issued on December 22, 2022.

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes “related issues”, and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: “. . . 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.”

The matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether or not the tenancy is ending, based on either of the notices to end tenancy issued by the Landlord. By Rule 6.2, I do not consider the Tenant’s other issues concerning monetary compensation, a reduction in rent, an alleged rent increase, or the Landlord’s compliance, items b. through d. and f. and g. listed above. By Rule 2.3, these issues are unrelated, and I amend the Tenant’s Application to exclude these issues. The Tenant has leave to reapply on these other issues. This means they may file a new and separate application to address this, and another arbitrator may consider these issues.

In addition, the *Act* s. 59(2)(b) states that an application for dispute resolution must “include full particulars of the dispute that is to be the subject of the dispute resolution proceedings”. The Tenant did not provide detail on separate pieces of their Application. As stated by the Landlord in the hearing, this left them guessing on what this hearing was about, and I as the Arbitrator had to spend more than a reasonable amount of time trying to understand a basic background in this tenancy.

In the alternative, I refuse to consider the pieces listed above on the Tenant’s Application, on the basis of a lack of full particulars. I decline to consider items b. through d. and f. and g. listed above, by applying s. 59(5)(c) of the *Act*.

Issues to be Decided

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

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an order of possession in line with the 10-Day Notice as per s. 55 of the *Act*?

### Background and Evidence

The parties did not have a tenancy agreement in writing. The Tenant explained how this works from their perspective: this was an original work-for-rent agreement involving the Landlord's property which is a single detached home. While working on repairing or renovating pieces of the Landlord's home, the Tenant would live there. A set amount for utilities at \$260 would vary with the number of occupants who resided at that same home.

The Landlord confirmed some details of the Tenant's description. They accepted this arrangement with the Tenant because the Tenant was getting evicted from their previous living place. The Tenant parked their vehicle at the Landlord's property and would handle incidental type of work at the property, such as shovelling snow in winter. The Landlord offered the Tenant a place to live, and a work-for-rent agreement seemed to work for them. The Landlord stated the date of May 1, 2021 as the Tenant's move-in date into the basement at the Landlord's home.

The Landlord stated that the basic amount of work was required was an amount equal to \$500, this was "supposed to be trade for work." According to the Landlord, the Tenant refused to work further from December 2022 onwards. Normally the work performed by the Tenant would cover this amount; however, from December 2022 onwards the Tenant refused to complete any more work; therefore, the Landlord apparently served the 10-Day Notice on December 22.

The Tenant stated they received the 10-Day Notice in December 2022. They also described receiving a Two-Month Notice to End Tenancy for Landlord's Use of Property. In the hearing they described living elsewhere for the past couple of months, with an acquaintance away from the Landlord's home. They stated a move out from the rental unit would "probably be a good idea" at this point. They stated their need to get personal belongings out from the Landlord's home and from the property. This includes a truck they have parked there, two sewing machines, a bicycle, a motorcycle, and other belongings.

The Landlord in the hearing reviewed the rent amounts left owing from December 2022 (\$500 owing because of no work completed), January 2023 (\$500 owing because of no work completed), and a full amount including \$260 for each of February, March, and April 2023. The Landlord stated they would “like very much for the Tenant to pay all of the rent.”

The Landlord provided that, in order for the Tenant to retrieve their personal property from the Landlord’s home, the Tenant would have to be accompanied by police. The Landlord insisted they must be present if the Tenant comes to the property to obtain their personal property; however, this requires the police also attending. In the hearing, the Tenant stated they really had no difficulty with the police attending at the Landlord’s home and property so they could retrieve their personal property.

### Analysis

Any document presented by a landlord to end a tenancy under various sections of the *Act* is subject to s. 52 of the *Act* which strictly governs form and content.

Above, I excluded all of the Tenant’s evidence from consideration. This includes the copy of the 10-Day Notice they provided. The Tenant provided a copy of a document that they submit was a Two-Month Notice to End Tenancy for Landlord’s Use of Property. Each of these documents is excluded from consideration without the Landlord having had the chance to review the documents and respond to them as evidence.

The Landlord did not have the opportunity to understand what this hearing was about in full. The Landlord prepared evidence for this hearing; however, they did not include a copy of the 10-Day Notice, or any Two-Month Notice to End Tenancy for Landlord’s Use of Property. The Landlord had the opportunity to seek clarification for this hearing in advance, and at least knowing that the Tenant was challenging the end-of-tenancy process started by the Landlord, I find the Landlord had the chance to prepare for this hearing by providing that as evidence.

The onus to provide a complete end-of-tenancy notice is on the Landlord. There is no complete copy of the 10-Day Notice in the evidence. I cannot issue an order of possession to the Landlord in this instance, where s. 55(1)(a) – the piece of the *Act* that strictly governs when a landlord can receive an order of possession – sets the strict requirement that a notice to end tenancy must comply with s. 52. That is the correct form used, along with all of the required content.

I cancel the December 22, 2022 10-Day Notice for this reason. The tenancy cannot end by any end-of-tenancy notices issued by the Landlord.

This is unfortunate for the Landlord where this Tenant, and this tenancy, seems difficult to manage. This stems from the original arrangement that was not documented, and it is not known how accurate the work-for-rent arrangement was on a month-to-month basis. In the hearing I had difficulty understanding the arrangement because the parties did not agree on the basic terms.

The Tenant agreed that it was time for them to move out from the Landlord's home. I trust that is the arrangement going forward, and there should be no further work of any kind completed by the Tenant at the property.

I order that the Landlord and Tenant enlist, however possible, the local police to attend when the Tenant visits to retrieve their property. This is the Tenant's own material, and I set the responsibility with them for making the arrangements. The Landlord must allow this to happen and cannot prevent the return of the Tenant's property. The Landlord and Tenant must complete this return of the Tenant's personal property by no later than May 15, 2023.

A return of the Tenant's property should constitute an end to this tenancy; hopefully the Tenant makes no other claim to entitlement of access to the rental unit for occupancy. If May 15, 2023 passes and the Tenant's personal property remains, the Landlord may consider the personal property abandoned, in which case Part 5 of the *Residential Tenancy Regulation* applies. The Landlord must consult with the Residential Tenancy Branch on their next steps in this case.

The Landlord is left with what they claim are rent amounts owing. The Landlord must file a separate application for this. This is a challenge for them in this work-for-rent arrangement that seemed to have no documents associated with the agreement. I strongly urge the Landlord to contact the Residential Tenancy Branch to determine what their next steps for compensation are in these circumstances. They should attend to this as soon as possible if they want what may be actual rent amounts owing from the Tenant.

As set out above, I cannot verify the completeness of any form the Landlord served to the Tenant to end the tenancy. The Landlord has not met the burden of proof to show the 10-Day Notice is valid; therefore, I cancel any 10-Day Notice issued by the

Landlord. It is of no legal effect and legally the tenancy legally can continue, despite the Tenant apparently now residing elsewhere for the past few months.

### Conclusion

I grant the Tenant's Application for cancellation of the 10-Day Notice. There is no order of possession to the Landlord.

The Landlord must allow the Tenant to attend to the property to retrieve their personal property. The Landlord has no ownership of any of that for any reason whatsoever. The Tenant must attend by May 15, 2023. The parties agree that the police shall accompany the Tenant for this purpose only; I order the Tenant to that arrangement.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 1, 2023

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Residential Tenancy Branch