



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, DRI, RR, LRE, OLC, OT, FFT**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 10, 2023 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 4, 2023 (the "10 Day Notice");
- an order to dispute a rent increase;
- an order granting a rent reduction;
- an order restricting the Landlord's right to enter the rental unit;
- an order the Landlord comply with the Act;
- another issues that was not listed; and
- an order granting the return of the filing fee.

The Tenants had applied for the dispute resolution proceedings to be held in a different format, rather than a teleconference hearing. In the February 10, 2023 Format of Hearing Decision, it was decided that this dispute will proceed by written submissions only. A new Notice of Hearing was generated, and the Tenants were directed to serve a copy of the Notice of Hearing and evidence to the Landlord.

The Tenants provided several proofs of service indicating that they served the above-mentioned documents to the Landlord by Canada Post Registered Mail on January 22, March 3, March 15, and March 31, 2023. The Tenants provided the Registered Mail receipts in support. Pursuant to Section 89 and 90 of the Act, I find that the Landlord is deemed to have been served five days later.

The Landlord submitted their evidence in response to the Tenants' Application. The Landlord did not provide any proof of service that they served their evidence to the Tenants. As such, I cannot consider the Landlord's evidence in this decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an 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.

I find that the most important issue to determine is whether or not the tenancy is ending based on the 10 Day Notice.

The Tenants' request for an order to dispute a rent increase, an order granting a rent reduction, an order restricting the Landlord's right to enter the rental unit, an order the Landlord comply with the Act, another issues that was not listed, are dismissed with leave to reapply.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

Section 52 of the Act States; In order to be effective, a notice to end a tenancy must be in writing and must;

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and

(e) when given by a landlord, be in the approved form.

The Tenants submitted a copy of the 10 Day Notice which they are disputing. I find that the 10 Day Notice served by the Landlord to the Tenants is an outdated form from 2015. I find that this form is no longer approved and is no longer available. I find the 10 Day Notice does not comply with Section 52 of the *Act*. In light of the above, I cancel the 10 Day Notice, dated January 4, 2023. I order that the tenancy continue until ended in accordance with the *Act*. As the Tenants were successful with their Application, I find that they are entitled to recover the \$100.00 filing fee. I order the Tenants deduct \$100.00 from one (1) future rent payment.

The Landlord is at liberty to re-serve a new 10 Day Notice to End Tenancy, however, the Landlord is encouraged to use the most current and approved 10 Day Notice form which can be found through the Residential Tenancy Branch Website:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/landlord-notice/10-day-notice>

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 08, 2023

Residential Tenancy Branch