



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Tenant: CNR, CNC, MNDCT, DRI, LRE, LAT, OLC, FFT  
Landlord: OPR-DR, MNR-DR, FFL

### **Introduction**

The Tenant filed an Application for Dispute Resolution (the “Application”) on May 5, 2023 seeking

- a. a cancellation of the Landlord’s One-Month Notice to End Tenancy for Cause (the “One-Month Notice”)
- b. a cancellation of the Landlord’s 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”)
- c. to dispute a rent increase that is above the amount allowed by law
- d. compensation for monetary loss
- e. to suspend/set conditions on the Landlord’s right to enter the rental unit
- f. authorization to change the locks to the rental unit
- g. the Landlord’s compliance with the legislation and/or the tenancy agreement
- h. reimbursement of the Application filing fee.

The Landlord filed an Application by Direct Request on May 15, 2023 for an order of possession in line with the 10-Day Notice, compensation for unpaid rent, and the Application filing fee. The direct request procedure was not available in this instance where the Tenant’s Application was already in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 3, 2023. In the conference call hearing, I explained the process and provided the attending parties the opportunity to ask questions.

Preliminary Matter – Landlord’s service of the Notice of Dispute Resolution Proceeding and evidence to the Tenant

The Landlord set out that they sent the Notice of Dispute Resolution Proceeding, in line with their Application to the Residential Tenancy Branch, to the Tenant with registered mail. They provided a registered mail tracking number to me in the hearing as proof of this means of service.

The tracking record for this individual piece of registered mail shows it was undelivered by Canada Post. The Landlord stated it was delivered to the back of the home, as per the individual unit number at the rental unit property. The Tenant in the hearing maintained that mail is delivered to the main part of the home at the rental unit property, where their individual rental unit is a laneway unit of that home. The Tenant maintained they did not receive the Notice of Dispute Resolution Proceeding from the Landlord, and no evidence from the Landlord.

I find the Landlord did not complete service as required. I accept the Tenant’s statement that they do not have an individual designated postal box for the rental unit. The registered mail tracking information shows it was not delivered. This was not the practical method for the Landlord to deliver the Notice of Dispute Resolution Proceeding to the Tenant when other means of providing complete service were available. I find the Landlord did not prove they used a reliable address to deliver their Notice of Dispute Resolution Proceeding and evidence to the Tenant.

Because the Landlord did not complete service as required, I dismiss their Application in its entirety. On this matter, the Landlord has leave to reapply for an order of possession in line with the 10-Day Notice, and compensation for rent amounts they may be owed.

Issues to be Decided

- a. Is the Tenant entitled to cancellation of the One-Month Notice?

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

- b. 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*?

- c. Did the Landlord impose a rent increase that was above the amount allowed by law, *i.e.*, not pursuant to s. 43 of the *Act*?
- d. Is the Tenant entitled to compensation for monetary loss/other money owed, pursuant to s. 67 of the *Act*?
- e. Is the Tenant eligible/authorized for a suspension/set conditions on the Landlord's right to enter the rental unit and/or to change the locks at the rental unit, pursuant to s. 31 and/or s. 70 of the *Act*?
- f. Is the Landlord obligated to comply with the *Act* and/or the tenancy agreement?
- g. Is the Tenant entitled to compensation for the Application filing fee, pursuant to s. 72 of the *Act*?
- h. Is the Landlord entitled to compensation for the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

In the hearing the Tenant described living in the rental unit since June 1, 2021. This was with another Tenant on the agreement at that time, as required, even though four people in total were living in the rental unit.

On October 4, 2022 the Tenant signed another tenancy agreement for \$2,200. The Tenant in the hearing stated they signed this agreement which was with an increased amount of rent. Prior to this, they were paying \$2,000 per month. Their attention to the matter of a rent increase, and regulated amounts for such, was focused when they viewed a public advertisement on the matter.

The Landlord in the hearing confirmed there was a newly-signed agreement in later 2022, with three people on that agreement.

- a. the One-Month Notice

The Tenant described receiving this document from the Landlord. As provided on their Application for this hearing, they received the document on April 26, 2023. The Tenant did not have the document present at the hearing and did not provide a copy thereof in their evidence for this hearing. They recalled that the details on that document provided the Landlord's reasons for ending the tenancy as those involving noise and disturbance to neighbours.

The Landlord in the hearing confirmed the reason for ending the tenancy in this way was because of the Tenant's noise issue. The Landlord described neighbours complaining to them about noise and guests to the Tenant's rental unit coming at all times of the night. This was "non-stop noise" happening "every night . . . seven days per week."

The Tenant rebutted the Landlord's comments by stating they lived in the rental unit for 2 years prior, and this did not seem to be a problem. They surmised this was a retaliatory move by the Landlord because the Tenant complained about the more recent increase in rent.

b. the 10-Day Notice

In the hearing the Tenant described receiving a 10-Day Notice from the Landlord. According to the Tenant, this stemmed from the Tenant raising the issue of the November 2022 increase in rent, as well as their recent trip where the Landlord requested identification of guests that were staying at the rental unit. The Tenant stated "I don't think I paid May rent." They then described how the Landlord stopped accepting rent payments after this time.

On their Application, the Tenant provided they received the 10-Day Notice on May 2, 2023 attached to the door of the rental unit.

The Landlord in the hearing stated the last time they received rent from the Tenant was on April 1, 2023 as payment for that month. They have not received any rent from the Tenant since that time. In reply the Tenant stated they continued to text message to the Landlord, but the Landlord stopped replying and was not accepting rent. The Landlord maintained that the Tenant was not doing that.

c. rent increase

In the hearing the Tenant presented that they signed a renewal tenancy agreement on October 4, 2022. The original agreement was in 2021. The Landlord confirmed there was a new tenancy agreement signed at that time because there were three people as tenants on the agreement and this number changed, so they required a different agreement.

The Tenant's original agreement was for \$2,000 per month in rent; the renewed agreement was for \$2,200. The Tenant submits this is an illegal rent increase by the Landlord. They did not know there was anything wrong with this until they noticed a public advertisement about problematic rent increases.

d. compensation to the Tenant

On their Application, the Tenant specified the amount of \$1,120 as the amount of "overpaid rent" with "insufficient notice". In the hearing, they specified this was money they paid over the actual permitted amount of a rent increase, which they quoted at 2%.

e. suspension/set conditions on Landlord's right to enter, allowed lock change

In the hearing, the Tenant described the arrangement at their rental unit. They are in a laneway part of the rental unit property. Their rental unit is connected to others. This means a part of their rental unit is very visible to the Landlord, who also lives at the rental unit property.

The Tenant described making their Application for this hearing in a heightened state of emotion in the hearing, and this impacted how they framed the issues they indicated on the Application. They stated "this was me just being petty".

f. Landlord's compliance with the *Act*/tenancy agreement

On their Application, the Tenant provided "Residential Tenancy Act" for a description of this issue. The Tenant more generally described the Landlord's efforts at asking the Tenant about noise, and the visits by police on what the Landlord described as neighbours' complaints.

Analysis

a. the One-Month Notice

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.

For the One-Month Notice (i.e., that document served to the Tenant by the Landlord in April 2023), I find there is no copy in the Tenant's evidence. The onus to prove an end-of-tenancy notice is on the Landlord. The Landlord did not provide a copy in response to the Tenant's Application to the Residential Tenancy Branch, and above I dismissed the Landlord's Application, in which incidentally the Landlord also did not provide a copy of that document.

There is no complete copy of a signed One-Month Notice in the evidence for this hearing. I cannot issue an order of possession in this instance, where s. 55(1)(a) sets the strict requirement that any notice to end tenancy must comply with s. 52.

For this reason, I order the One-Month Notice, ostensibly issued by the Landlord to the Tenant on April 26, 2023, is cancelled and of no effect. The tenancy will not end by reason of the Landlord's service of this document to the Tenant.

b. the 10-Day Notice

The Tenant did not provide a copy of the document with their Application to the Residential Tenancy Branch. As above, the onus to prove an end-of-tenancy notice is valid is on the Landlord. That includes whether the correct form, with all necessary details, is in the record to verify s. 52. The Landlord did not provide a copy, and I dismiss the Landlord's Application above.

There is no copy of the 10-Day Notice document for this hearing. I cannot issue an order of possession where s. 55(1)(a) sets the requirement that any notice to end tenancy complies with s. 52.

For this reason, I order the 10-Day Notice, issued by the Landlord, is cancelled and of no effect. The tenancy will not end by reason of the Landlord's service of this document to the Tenant.

I caution the Tenant that s. 26 of the *Act* requires a payment of rent in any circumstances. This is even if the Tenant feels the Landlord is violating the *Act*. There is no hold on rent where the Tenant has applied for dispute resolution. I find as fact that

the Tenant has not paid rent for several months running, and that is a very serious concern from the Landlord's perspective. The Tenant may require other intervention from the Residential Tenancy Branch if they are legitimate in their claim that they are attempting to pay the rent by the Landlord is not accepting that.

The Landlord is free to apply for another order of possession in line with the 10-Day Notice they issued to the Tenant on May 2, 2023. The Landlord may provide document as evidence in a separate application to the Residential Tenancy Branch.

c. rent increase

The *Act* s. 43 provides the situations in which a landlord may increase rent. This is an amount calculated according to the regulations (as the Tenant referred to as the legal means in the hearing), ordered by the Residential Tenancy Branch, or agreed to by the Tenant in writing.

The *Act* allows parties to agree in writing. I find a tenancy agreement is parties' agreement to the set amount of rent in writing. I find the Tenant here agreed to the amount of \$2,200 per month in rent. As per the *Act*, this is not an illegal rent increase.

d. compensation to the Tenant

From the above, I find the Tenant did not overpay rent, and there was no rent collected that was not allowed by the *Act*. I grant no compensation to the Tenant for this reason.

e. suspension/set conditions on Landlord's right to enter, allowed lock change

A landlord's right to enter the rental unit is governed by s. 29 of the *Act*. This allows for a landlord's entry: where the tenant gives permission at the time of entry; with written notice at least 24 hours in advance; or in the case of an emergency.

Because of the Tenant's description of the issue in the hearing, I make no order for suspension or set conditions on the Landlord's right to enter. There were no statements or submissions on an emergency-type situation requiring an effective bar against the Landlord's entry; therefore, I make no order for the Tenant to change the locks on the rental unit. I am not satisfied the Landlord is likely to enter the rental unit other than as authorized by s. 29; therefore, I make no order that authorizes the Tenant to change the locks or keys.

I find the Tenant was not genuine in completing this piece of their Application to the Residential Tenancy Branch. I dismiss these two pieces of the Tenant's Application, without leave to reapply.

f. Landlord's compliance with the *Act*/tenancy agreement

It appears the Landlord has a serious issue in effectively dealing with complaints about noise, or frequent guests in the rental unit. They already attempted to end the tenancy for this reason; however, I dismissed this for the reason outlined above.

I find the Landlord here has every right to call the police in instances of noise that violates the municipality bylaws. Additionally, the Landlord is obligated to comply with those bylaws and effectively manage tenants who do not comply with those laws. I find it more likely than not that the Tenant is abusing the situation; I find the Landlord credible in their description of the Tenant leaving music on in the rental unit during the day when it is unoccupied, and the Tenant is also deliberately creating difficulty in leaving the music too loud. The Tenant stated this in the hearing directly.

As described by the Tenant in the hearing, I find there was no outright violation by the Landlord of any part of the *Act* or the tenancy agreement. The Tenant did not frame this issue with reference to the *Act* or the tenancy agreement specifically.

I caution the Tenant that continual violations of bylaws surrounding noise are grounds for a landlord to end a tenancy, as listed in s. 47(d), and (e) of the *Act*.

g. Tenant's Application filing fee

The Tenant was successful in this Application; therefore, I authorize the Tenant to deduct the amount of \$100 from one future rent payment to the Landlord.

h. Landlord's Application filing fee

The Landlord was not successful in their Application; therefore, I grant no reimbursement to them of that amount.

Conclusion



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

I have dismissed the Landlord's Application; therefore, I grant no compensation to them for rent amounts owing. The Landlord has leave to re-apply on an Order of Possession and recovery of rent amounts owing, in line with the 10-Day Notice.

I dismiss the other pieces of the Tenant's Application, without leave to reapply.

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: August 4, 2023

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Residential Tenancy Branch