



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

For the Tenants: CNR

For the Landlord: OPR, MNR, MNDCL, FFL

### **Introduction**

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenants' application pursuant to the Act is for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46.

The landlord's application pursuant to the Act is for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:31 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. Landlord JA (the Landlord) and agent MJ attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord, agent MJ and I were the only ones who had called into this teleconference.

### **Service of the tenants' notice of hearing (the tenants' application)**

The Landlord confirmed receipt of the tenants' application (dated August 13, 2024) without any evidence and that he had enough time to review it.

The tenants' application states:

01 - I want to dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities

Notice delivery date: Aug 8, 2024

Notice delivery method: Other

Applicant's dispute description: was told about in a text

The Landlord affirmed that he served several 10 day notices to end tenancy on the tenants.

Based on the Landlord's undisputed testimony, I find the tenants sufficiently served their application in accordance with section 71(2)(c) of the Act. I further find, based on the Landlord's testimony, that the tenants did not serve evidence documents with their application.

Rule of Procedure 6.6 states the onus of proof in this case is on the respondent Landlord, as the tenants' application is for an order to cancel a notice to end tenancy:

6.6 The standard of proof and onus of proof

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.

The onus to prove their case is on the person making the claim. In most circumstances this is 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.

However, the tenants' application does not provide the date of the 10 day notice to end tenancy and the tenants did not serve evidence with their application. The date of service of the 10 day notice to end tenancy is not the notice's date. Thus, I cannot grant an order to cancel the alleged 10 day notice to end tenancy, as I do not have enough information to specify which notice to end tenancy the tenants disputed and the Landlord served several 10 day notices to end tenancy on the tenants.

For this reason, I dismiss the tenants' application to cancel a 10 day notice to end tenancy with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Service of the landlord's notice of hearing (the Landlord's application)

MJ stated the Landlord served the Landlord's application via email, but she does not know when he did so.

The Landlord testified he did not serve his application.

Based on the contradictory testimony between the Landlord and agent MJ, I find the Landlord failed to prove service of the Landlord's application.

Section 89(1) states the applicant must serve the application.

It is not fair to proceed with the hearing regarding the Landlord's application, as the Landlord did not serve the application.

Thus, I dismiss the Landlord's application. I grant leave to reapply, as I did not hear the merits of the Landlord's application.

Leave to reapply is not an extension of any applicable limitation period.

The Landlord must bear the cost of the filing fee, as the Landlord was not successful.

I make no findings on the merits of these matters.

Conclusion

I dismiss both applications with leave to reapply.

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

Dated: September 12, 2024

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Residential Tenancy Branch