



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

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DECISION

Introduction

The Tenants seek to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”) under section 46(4)(b) of the *Residential Tenancy Act* (the “Act”). In addition, they seek an order for landlord compliance under section 62(3). By way of cross-application the Landlord seeks an order of possession and a monetary order in relation to the Notice. Both sides seek to recover the cost of their application fee.

Preliminary Issue: Errors Proving Fatal on Notice

While I make no findings of fact or law in respect of what the rent *should* be on this tenancy (because the application by the Tenants is not a rent dispute-type application), I do find that the Landlord issued the Notice on the basis that the Tenants did not pay rent of \$4,770.00 that was purportedly due on April 15, 2025. However, in an email from the Landlord to the Tenant on April 17, 2025, the Landlord stated that “the full rent of \$4,500 must be paid by end of day tomorrow [*sic*] (April 17, 2025).” On April 19, the Landlord gave the Notice to the Tenants by posting it on the door of the rental unit. However, the Notice indicates, on page 2, that the Tenants failed to pay rent of \$4,770.00, that was apparently due on April 15.

Section 46(1) of the Act permits a landlord to give a tenant a notice to end tenancy if rent is unpaid on any day after the day it is due. A notice to end the tenancy must comply with section 52 of the Act, pursuant to section 46(2) of the Act. Section 52 of the Act requires that in order for a notice to end tenancy to be effective that the notice must be in writing and (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 prepared, if applicable, in accordance with section 53.1 [*generated notices for ending certain tenancies*].

If a notice to end a tenancy does not comply with section 52 then the notice may be amended (by an arbitrator) if the arbitrator is satisfied on a balance of probabilities that (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and (b) in the circumstances, it is reasonable to amend the notice.

In this dispute, despite the tenancy agreement indicating that rent is \$4,500, and despite the Landlord's agent telling the Tenants that they would not enforce any amount above the \$4,500, the Landlord nevertheless issued the Notice on the basis that the Tenants had not paid \$4,770.00. This is not a small difference, and it is my finding that it would not, given the Landlord's earlier assurances about what they would pursue, be reasonable to amend the Notice. I find that amending the Notice would unfairly prejudice the Tenants, who were just assured that rent owing might be \$4,500. For this reason alone, I would find that the Notice is not valid and for that reason not legally enforceable. The Notice is therefore ordered cancelled effective immediately. The tenancy shall continue until it is ended in accordance with the Act.

However, in the alternative, even if I am in error on this point, I am not satisfied on a balance of probabilities that the Tenants did not, in fact, pay rent for April. Indeed, the ledgers by both parties establish that the Tenants paid rent that was due on April 15 on March 17 in the amount of \$4,500.

The Landlords provided a rent ledger document into evidence, but only *some* supporting bank transaction records showing payments made. It is important to note that the landlord who issues a notice to end a tenancy for nonpayment of rent bears the onus of proving non-payment. And, with respect, I am simply unable to find that the Landlord has proven that the Tenants failed to pay rent.

Thus, for these reasons, **I dismiss the Landlord's application and grant the Tenants an order canceling the 10 Day Notice to End Tenancy for Unpaid Rent.** I make no further findings in respect of whether the Notice was properly served. Nor, for that matter, do I issue any order requiring the Landlord to comply with the Act.

While I appreciate that the requested order by the Tenants concerns how a rent increase went into effect, such a request must be made by way of an application to dispute a rent increase. Any such application made by the Tenants would also provide them with an opportunity to claim compensation for any unlawfully paid rent.

As the Tenants were successful in their application they are entitled to recover the cost of their application by making a one-time deduction of \$100.00 from their next rent payment (pursuant to section 72(2) of the Act).

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: May 27, 2025

Residential Tenancy Branch