



DECISION

Introduction

This hearing dealt with the Tenant's two Applications for Dispute Resolution (Applications) under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated May 3, 2025 (10 Day Notice) under sections 46 and 55 of the Act
- order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act x 2

Service

Both parties confirmed service at the outset of the hearing. I find there are no service issues as a result.

Preliminary Matter

Both parties confirmed their respective email addresses during the hearing. As a result, this decision will be emailed to both parties.

Issues to be Decided

Should the 10 Day Notice be cancelled?

Has the Tenant provided sufficient evidence to support an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

Facts and Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, which is more likely than not, I find the following.

A copy of the tenancy agreement was submitted in evidence. The parties referred to a previous decision dated April 18, 2025 (Previous Decision). The file number of the Previous Decision has been included on the cover page of this decision.

In the matter before me, the parties claim there was a 2018 updated tenancy agreement but failed to provide a copy of a 2018 dated decision. The parties admitted that while a second agreement was signed, it was backdated to May 2008, as the original start date of the tenancy was May 1, 2008.

The parties were advised that I was not bound to follow the Previous Decision based on section 64(2) of the Act which reads as follows:

64(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

[reproduced as written]

Given the above, I find that any tenancy agreement backdated to May 1, 2008, does not replace the original tenancy agreement also dated May 1, 2008, pursuant to section 5 of the Act, which states as follows:

This Act cannot be avoided

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

[reproduced as written]

The "contra proferentem" rule, or "contra proferentem doctrine," is a legal principle used in contract interpretation in Canada. It essentially means that when a contract term is ambiguous, it should be interpreted against the party who drafted it. This is because the party who drafted the contract had the opportunity to be clear and precise, and the ambiguity is their responsibility. As a result, I find that any subsequent tenancy agreement is not enforceable based on the legal principle of contra-proferentem. I find that for a subsequent tenancy agreement to be enforceable, it must be dated on the date it changes, not backdated, which I find to be too confusing to differentiate between the original tenancy agreement, which began May 1, 2008.

Regarding the 10 Day Notice, the parties agreed that monthly rent was \$1,545.15 per month and due on the first date of each month as of April 1, 2025. In support of this, the Landlord submitted a Notice of Rent Increase form, which was reviewed during the hearing. As the parties agreed that the full amount of rent of \$1,545.15 was paid within 5 days of the 10 Day Notice being served on the Tenant, I find the 10 Day Notice is of no effect pursuant to section 46(4) of the Act. As such, an application to dispute the 10 Day Notice was not necessary as the Tenant paid the required rent within the 5-day timeline already permitted under section 46(4) of the Act.

This leaves two remaining items for my consideration, where the Tenant has requested the following:

1. The Tenant wanted the landlord to abide by the rent amount of a recently enforced order in the Previous Decision.
2. I would like the landlord to provide the requested pet agreement as per the April 18, 2025, binding arbitrator order. The order enforced a 2020 agreement, that in line with the landlord's building policy, allowed cats if a pet agreement is signed. The tenant has had cats as companion animals since April, 2008, with no issues. There was no pet agreement with the original tenancy which was amended by the landlord and tenant to allow cats.

The parties were advised that 1 above is incorrect, as I find that the arbitrator did not reduce rent or make any orders in terms of what the monthly rent was in the Previous Decision. Therefore, I dismiss this request for an order against the Landlord due to insufficient evidence, **without leave to reapply**.

Regarding 2 above, I find the Tenant provided insufficient evidence that there was a 2020 or 2018 new agreement for my consideration and as such, I dismiss this request with leave to reapply as I find there is no new tenancy agreement before me. I find the only tenancy agreement regarding this tenancy is the original tenancy agreement dated May 1, 2008, which I find cannot be backdated as that would constitute fraud.

Conclusion

The applications are not successful.

The original tenancy agreement stands as a backdated agreement does not supersede an original tenancy agreement for the reasons stated above.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 5, 2025

Residential Tenancy Branch