



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR-MT

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on July 21, 2021, wherein the Tenants sought an Order, pursuant to section 46 of the *Residential Tenancy Act* (the "Act"), cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on July 6, 2021 (the "Notice") as well as more time pursuant to section 66 of the *Act* to make such an application.

The hearing of the Tenants' Application was scheduled for teleconference at 9:30 a.m. on November 22, 2021. Only the Tenant, C.L., called into the hearing. He confirmed he was appearing on his own behalf and as agent for the other Tenant, N.A., who was at work. The Landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m.

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 Tenant and I were the only ones who had called into this teleconference.

As the Landlord failed to call into the hearing, I considered service of the Tenants' Hearing package. The Tenant stated that they served the Landlord with Notice of the Hearing, their Application for Dispute Resolution, and all their evidence in support of their claim, by email on August 7, 2021.

Email may be considered an acceptable means of service if the parties regularly used email during the tenancy. In this case, the Tenant confirmed that the Landlord served the Notice by email and, although the Tenant did not regularly check that account, he responded to that email and attached the Notice of Hearing, Application, electrical utility

bills, fact sheet and the Respondent instructions. The Tenant further stated that in August he received another email from the Landlord with instructions for future rent payments. I find the parties routinely used email for correspondence relating to the tenancy, and as such I find the Landlord was duly served with notice of this hearing as of August 10, 2021, three days after the Tenants sent the email to the Landlord.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

**Commencement of Hearing:**

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

**Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As I have found the Landlord was served with Notice of this hearing, I proceeded with the hearing in their absence.

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy.

As the Landlord failed to call into the hearing, I find the Landlord has not met the burden of proving the reasons for issuing the Notice. **I therefore grant the Tenants' Application to cancel the Notice.** The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

In addition, the Tenant testified that they have continued to pay rent and the Landlord has accepted their rent payments. The Landlord has not issued receipts for "use and occupancy only". I find the Landlord has reinstated this tenancy.

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: November 22, 2021

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Residential Tenancy Branch