



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNR

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agents (RP and KC) attended the hearing and was 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 and I were the only ones who had called into this teleconference.

The landlords testified that the tenant served the landlord with the notice of dispute resolution form but provided no supporting evidence package. The notice was served to the landlord on January 26, 2022.

At the outset, I advised the landlord's agents of rule 6.11 of the Residential Tenancy Branch (the "**RTB**") Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The landlord's agents confirmed that they were not recording the hearing. I also advised the landlord's agents that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

### **Preliminary Issue #1-Application Dismissed**

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

#### **Rule 7- During the Hearing**

##### **7.1 Commencement of the dispute resolution hearing**

*The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.*

##### **7.3 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.*

Further, Rule 7.4 states:

**Rule 7.4 Evidence must be presented**

*Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.*

Accordingly, in the absence of any attendance at this hearing by the applicant (tenant) I order the tenant's application dismissed without leave to reapply.

**Preliminary Issue #2: 10 Day Notice issued January 13, 2022**

The landlord's agent, RP, provided the following information. On September 20, 2021, the tenant was given a Notice of Rent Increase effective January 1, 2022. The tenant's rent increased from \$900.00 to \$913.00 per month. The tenant did not pay her rent on January 1, 2021. The landlord, knowing that the tenant had been in a serious motor vehicle accident, gave the tenant some leeway with respect to payment of rent. When rent was not paid by January 13, 2022, the landlord's agent issued a 10 Day Notice. The tenant filed for Dispute Resolution and paid the rent on January 19, 2022.

The landlord and tenant had a discussion. The 10 Day Notice was withdrawn.

Residential Tenancy Branch Policy Guideline 11, "Amendment and Withdrawal of a Notice to End Tenancy" reads in part:

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**C. Withdrawal of Notice to End Tenancy**

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below).

It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

**D. Waiver of Notice and new or Continued Tenancy**

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived, and the tenancy will continue.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behavior of the landlord or tenant.

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The effective date of the 10 Day Notice was January 24, 2022. The tenant paid the rent on January 19, 2022, at which time the landlord's agent told the tenant the 10 Day Notice was withdrawn. The parties did not document the withdrawal in writing. I find there was implied consent between the parties since tenancy continued.

The tenant said she would contact the RTB advising that the matter was resolved and withdraw her application. She did not do so.

Rule 5 – "Before the hearing" in the Residential Tenancy Branch Rules of Procedure, addresses the matter of application withdrawal.

### **5.0.1 Withdrawal of an Application for Dispute Resolution**

#### **How to withdraw an application for dispute resolution.**

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#### **Withdrawing an application to dispute a note to end tenancy.**

Where a tenant has applied to dispute a landlord's notice to end tenancy, the applicant tenant requires the written consent of the landlord to withdraw their application.

Required documents:

- the respondent landlord's written consent to withdraw

There is insufficient evidence on file to show that the tenant contacted the RTB to withdraw her application for dispute resolution. Further, the landlord did not provide written consent to the tenant to withdraw the application

Subsequently, the tenant paid rent late in February (part payment February 8 and the remainder February 16) and paid no rent in March. On March 8, 2022, the landlord's agent issued a second 10 Day Notice.

On March 11, 2022 the landlord's agent and tenant scheduled an appointment. The tenant stated she was not disputing the second 10 Day Notice. On March 15, 2022, the tenant left the rental unit, without advising the landlord, and provided no forwarding address.

The issue before me is the 10 Day Notice issued on January 13, 2022. Since the tenancy continued beyond the effective date of the 10 Day Notice issued January 13, 2022, I find there was implied consent to withdraw the 10 Day Notice. Since the tenant no longer resides in the residence, there is nothing for me to consider. The tenant's application is dismissed without leave to reapply.

The landlord's agent asked if the security deposit could be applied against the March 2022 rental arrears. I explained that the matter before me was the issue of the 10 Day Notice issued January 13, 2022. I am unable to decide issue which occurred after the 10 Day Notice to End Tenancy was issued on January 13, 2022, in my decision. While the information may provide corollary evidence, it is not relevant to prove whether the landlord had cause to issue the 10 Day Notice dated January 13, 2022. That evidence would include, without limiting the generality of the foregoing, any additional notices issued and any instances of non-compliance occurring after January 13, 2022. The landlord may want to contact the Residential Tenancy Branch Information Desk to discuss options.

### **Conclusion**

The tenant's application to cancel the 10 Day Notice is dismissed without 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 *Residential Tenancy Act*.

Dated: April 13, 2022

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Residential Tenancy Branch