



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with the tenants' request to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to submissions of the other party.

### Issues(s) to be Decided

Was the Notice sufficiently served upon the tenants and should it be upheld or cancelled?

### Background and Evidence

The parties provided undisputed testimony as follows. The tenancy commenced April 1, 2010 and the tenants paid a \$350.00 security deposit March 17, 2010. The tenants are required to pay rent of \$700.00 on the 1<sup>st</sup> day of every month. The tenants failed to pay \$100.00 of rent for July and failed to pay rent for August 2010. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent indicating \$800.00 was outstanding as of August 1, 2010. The landlord served the notice upon the tenant's guest when the tenants were not home. The tenants acknowledge finding the Notice on the fridge on August 6, 2010 and August 10, 2010 respectively.

The tenants submitted they have \$700.00 to pay the landlord now and need a few days to obtain the remainder of outstanding rent owed as they are both on income assistance

now and the Ministry has advised the tenants they will get assistance with the rent they owe. Also, the landlord can start receiving direct deposit for the rent from the Ministry.

The landlord submitted that the tenancy should end due to late payments and non-payment of rent during the short duration of the tenancy.

Provided as evidence was the 10 Day Notice given to the tenant's guest which shows a signature of the guest acknowledging receipt of the Notice.

### Analysis

Section 88 provides for ways a landlord must serve a document upon a tenant. The requirement to serve a document in a certain way is not discretionary. The purpose of serving a Notice is to inform the party of their breach and provide the party with an opportunity to rectify the breach.

Section 88(e) permits a landlord to leave a document at a tenant's residence with a person that resides with the tenant. In this case, the person who received the 10 Day Notice does not reside with the tenants. Accordingly, service did not occur in a manner that complies with the Act. Therefore, I cancel the Notice with the effect that this tenancy continues. For clarity, the tenants remain liable to pay the outstanding rent owed to the landlord.

As explained to the parties during the hearing, section 71 of the Act permits that I may make an order that a document not served in accordance with section 88 was sufficiently served. The provision of section 71 is discretionary and in this case I did not order the Notice sufficiently served. Rather, the landlord is at liberty to issue another 10 Day Notice to include all rent owing and serve it upon the tenants in a manner that complies with the Act. Upon receipt of the Notice the tenants will have five days to pay the outstanding rent in full in order to nullify the Notice.

Conclusion

The Notice issued August 3, 2010 was not sufficiently served upon the tenants and I cancel the Notice with the effect that this tenancy continues.

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: September 03, 2010.

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Dispute Resolution Officer