



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      CNR, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice for Unpaid Rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began on June 15, 2010 as a month to month tenancy for the monthly rent of \$850.00 due on the 15<sup>th</sup> of each month and that no security deposit was required.

The tenant submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on February 7, 2011 by the landlord with no effective vacancy date for unpaid rent in the amount of \$500.00.

The tenant testified that she provided her rental payments to another tenant in the residential property who acted as the agent for the landlord and she understood this tenant was to deposit the rent amounts. The tenant testified she was not provided with any receipts.

The landlord submitted a summary of rental payments and indicates the tenant failed to pay the full rent for the months of September, October and November 2010. The landlord provided copies of his "account activity" showing various transactions for each of the months of the tenancy.

The account activity documents show several deposits per month but provide no explanation as to who made the deposits and for what purpose. The landlord's agent

explained for the months in questions that there were no deposits totalling either the amount of this tenant's rent or the total of the rent from the tenant who was suppose to deposit both and this tenant's payments.

### Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving a notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Despite the landlord's submission of records of deposits being made to his account, I find the landlord has failed to provide any records that document how much this tenant has paid for rent for any of the months of the duration of this tenancy. As a result, the landlord has failed to establish the tenant failed to pay any rent.

As the landlord has failed to establish the tenant owed any monies for rent, I grant the tenant's application to cancel the 10 Day Notice to End Tenancy issued on February 7, 2011.

### Conclusion

As noted above, I order the 10 Day Notice to End Tenancy for Unpaid Rent issued on February 7, 2011 to be cancelled and I find the tenancy remains in full force and effect.

As the tenant was successful in her application, I find that she is entitled to recover the filing fee of \$50.00 for her Application. In accordance with Section 72(2)(a), I order the tenant may retain this amount from her next rental payment in satisfaction of this order.

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: February 22, 2011.

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Residential Tenancy Branch