



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNR, FF

### **Introduction**

This hearing dealt with the Tenants' application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) and recovery of the cost of the filing fee from the Landlord. Both parties appeared at the hearing, gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Tenant served the Landlord with the Notice of Hearing documents and copies of his evidentiary material, by handing the documents to the Landlord's agent on July 20, 2011.

### **Issue to be Decided**

Should the Notice issued July 11, 2011, be cancelled?

### **Background and Evidence**

The Tenant testified that he received the Notice, by registered mail, on July 16, 2011.

The Tenant testified that he has lived in the rental unit since December, 2009, and since that time has been paying his rent by automatic withdrawal from his bank account. The Tenant was concerned that the Landlord issued the Notice to End Tenancy on the same day that the Tenant had other unrelated correspondence with the Landlord, but that the Landlord's agent did not advise him at the time that the automatic withdrawal did not go through. The Tenant made enquiries with his bank and discovered that there was no attempt to make the withdrawal.

The Landlord's agent called his former employer and the Tenant is concerned that remarks may have been made to his former employer about his rent not being paid. The Tenant stated that he spoke to the Landlord's agent after he received the Notice and advised him that money was available in his account on July 1, 2011. He testified that he suggested that the Landlord try to withdraw the funds, but the Landlord refused to do so. The Tenant was concerned about being deemed to accept the tenancy ended pursuant to the provisions of Section 46(5) of the Act, and therefore filed his Application on July 19, 2011. The Tenant stated that he has cancelled his authorization for the Landlord to automatically withdraw subsequent rent from the Tenant's bank account and that he provided the Landlord with a cheque for July's rent on July 20, 2011.

The Landlord's agent testified that the banking system failed to withdraw rent from the Tenant's account on July 1, 2011. He acknowledged that it was the Landlord's error. The Landlord's agent stated that the Tenant was a good tenant and that he always paid his rent on time.

The Landlord's agent stated that he called the Tenant at his former employer's place of business because it was a contact number that the Tenant had provided to him.

The Landlord's agent testified that the Landlord did not refuse to attempt to withdraw the rent after the Notice was issued. He stated that the automatic withdrawal system would not allow the Landlord to attempt to withdraw the money again from the Tenant's bank account.

### **Analysis**

Section 26 of the Act requires a tenant to pay rent when it is due. The parties had an agreement that the Landlord could automatically withdraw the rent from the Tenant's bank account on the first day of each month. I accept the Tenant's testimony that funds were available in his bank account on July 1, 2011.

Therefore, I grant the Tenant's application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant is cautioned that he should provide the Landlord with updated contact information when his contact numbers change.

The Tenant has been successful in his application and is entitled to recover the filing fee from the Landlord. The Tenant may deduct \$50.00 from a subsequent month's rent in satisfaction of this award and the Landlord must consider the rent paid in full.

### **Conclusion**

The Notice to End Tenancy issued July 11, 2011, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant may deduct \$50.00 from future rent due to the Landlord.

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: August 22, 2011.

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Residential Tenancy Branch