



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for unpaid rent and to confirm that the Landlord cannot charge a \$50.00 late payment fee.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy issued October 1, 2012 be cancelled?

### Background and Evidence

The Landlord submitted nineteen pages of evidence which included, among other things, copies of: the tenancy agreement; a notice issued to tenants advising that rent is payable no later than 9:00 p.m. on the first of each month and the tenants will be charged a \$50.00 late fee if rent is received after that time; notes written by the Tenant; and several 10 Day notices including one issued October 1, 2012.

The Tenant submitted evidence which included, among other things, copies of: the tenancy agreement and the 10 Day Notice issued October 1, 2012.

The following facts are not in dispute:

- The parties entered into a fixed term tenancy that began on July 1, 2012 and switched to a month to month tenancy after October 1, 2012.

- Rent was payable on the first of each month in the amount of \$800.00 and on June 30, 2012 the Tenant paid \$400.00 as the security deposit.
- On October 2, 2012 the Landlord personally served the Tenant with a 10 Day Notice to end tenancy for unpaid rent that was due October 1, 2012.
- The Tenant paid the October 2012 rent in full on October 4, 2012, within the required five day period which cancels the Notice.
- The tenancy agreement does not provide that the Landlord may charge a late payment fee if rent is not paid by the due date.

The Tenant advised that he wanted confirmation that the Landlord cannot charge a \$50.00 late payment fee because the Regulations stipulate it can only be a \$25.00 fee that may be charged if it is provided for in the tenancy agreement.

The Landlord acknowledged that the \$50.00 fee was not in accordance with the Regulations and that it was not stipulated in the tenancy agreement. He was of the opinion that the notice that was served to each tenant after they entered into their tenancy would enable the Landlord to charge the late payment fee.

### Analysis

When a tenant receives a 10 Day Notice to end tenancy they have five days to either pay the rent in full or make application to have the Notice cancelled. In this case the Tenant received the Notice on October 2, 2012 and paid the rent in full on October 4, 2012. Accordingly, the 10 Day Notice is no longer in effect as the rent has been paid in full within the required timeframes.

Section 7 of the Regulations stipulate that a landlord may charge a non-refundable fee of not more than \$25.00 for late payment of rent only if the tenancy agreement provides for that fee.

In this case the tenancy agreement did not provide for a late payment fee. Accordingly, I confirm that the Landlord cannot collect a late payment fee of \$50.00 when rent is paid after the due date.

### Conclusion

The 10 Day Notice to end tenancy for unpaid rent issued on October 1, 2012, is HEREBY CANCELLED and is of no force or effect.

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 08, 2012.

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Residential Tenancy Branch