



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNR, FF

### **Introduction**

This hearing was convened in response to an application by the tenant filed on January 21, 2013 under the *Residential Tenancy Act* (the Act) to cancel a 10 Day Notice to End Tenancy for Non-Payment of Rent or Utilities dated January 07, 2013, and to recover the filing fee. Both parties acknowledged receiving the evidence of the other.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence to this application that they wished to present. Only evidence relevant to this matter was considered. At the outset of this hearing the landlord requested an Order of Possession if I upheld the landlord's Notice.

### **Issue(s) to be Decided**

Is the notice to end tenancy valid?  
Is the landlord entitled to an Order of Possession?  
Is the tenant entitled to the monetary amount claimed?

### **Background and Evidence**

It must be noted the parties attended a hearing on January 16, 2013 in respect to similar issues in this dispute.

The relevant evidence in this dispute / matter is as follows. Prior to the Decision of January 16, 2013 the landlord had given the tenant a subsequent Notice to End Tenancy for unpaid rent and utilities dated January 07, 2013. The Notice claimed unpaid rent for January 2013 and a quantum of unpaid utilities for the past several months. The landlord claims they gave the tenant the Notice on Jan 07, 2013 by posting it on their door. The tenant claims they "found" the Notice in their garage on January 14, 2013. Regardless, the parties agree that the *rent portion* of the monies in dispute was paid January 14, 2013. The parties agree that the only monies in dispute are those claimed as in arrears for *utilities* in the stipulated amount of \$310.83. The tenant claims they have paid utilities they owe under the tenancy agreement, but have not been given a receipt for those payments as proof of payment. The landlord claims

the utilities have been paid. The landlord testified that beyond the previous Notice to End dated December 09, 2012, they did not notify the tenant *in writing* (written demand) of the claimed outstanding utilities prior to issuing the Notice to End of January 07, 2013. However, the landlord testified they had previously sent a demand for payment of the utilities by e-mail.

### **Analysis**

I find that if I accept the landlord's testimony they posted the 10 Day Notice on the tenant's door on January 07, 2013 - one week before the tenant's claim of receipt – I find that according to Section 90 of the Act, the tenant is deemed served on the 3<sup>rd</sup> day *after* the posting (January 10, 2013). Having paid the rent January 14, 2013, the tenant paid the rent within 5 days after receiving the Notice to End according to the landlord.

In respect to the utilities portion of the claimed arrears, I find Section 46 of the Act, in part, states as follows:

#### **Landlord's notice: non-payment of rent**

##### **46 (6) If**

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the landlord did not provide written demand for payment of the utilities prior to issuing the tenant the 10 Day Notice to End January 07, 2013. In addition, the landlord has the burden of proving when and how they gave the tenant a Notice to End – which in this matter the landlord has not met this onus. Thus, I accept the tenant's testimony, and filing a dispute of the Notice to End within the required 5 days to do so. As a result of all the above, I find the landlord's Notice to End dated January 07, 2013 is not effective to end the tenancy. The Notice is therefore **set aside and is of no effect**. The landlord is at liberty, if necessary, to serve the tenant a *new and valid* Notice to End in accordance with the Act. Both parties were advised that if they require assistance with what is required of them, or what is prescribed in the Act, they should consult an Information Officer at the Branch with a view to avoid repeating disputes of this nature in the future.

### **Conclusion**

**I Order** the 10 Day Notice to End Tenancy for Non-Payment of Rent or Utilities dated January 07, 2013 **is set aside and is of no effect**, and the tenancy continues.

As the tenant was successful on their application they are entitled to recover their filing fee paid to file this application. **I Order** the tenant may deduct **\$50.00** from a future rent.

*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 14, 2013

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Residential Tenancy Branch

