



# 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 by way of conference call in response to the tenants' application to cancel a Notice to End Tenancy for unpaid rent and to recover the filing fee from the landlord for the cost of this application.

One of the tenants, the landlord and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Is the tenant entitled to have the Notice to End Tenancy cancelled?

### Background and Evidence

The parties agree that this month to month tenancy started on April 01, 2012. Rent for this unit was \$2,491.00 per month due on the 1<sup>st</sup> of each month.

The landlord testifies that he thought the tenant had not paid rent on August 01, 2013 as the tenant did not pay the rent in the usual manner. The landlord testifies that he then issued a 10 Day Notice to End Tenancy on August 02, 2013 and served the tenants on that date. The landlord testifies that he later found out that the tenant had paid the rent

by direct deposit into the landlord's bank. The tenants had not informed the landlord that they had done so on August 01, 2013. The landlord testifies that as there was no rent owed on August 01, 2013 then this would have made the 10 Day Notice invalid and the tenant did not need to file an application to dispute the Notice as it would be automatically cancelled. The landlord therefore disputes that the tenants are entitled to recover the \$50.00 filing fee.

The tenant testifies that they brought in evidence to show the rent had been paid on August 01, 2013. The tenant testifies that as the landlord had also served the tenants with a Two Month Notice and the tenants had provided 10 days Notice as allowed under the *Residential Tenancy Act (Act)* then the tenants needed to file an application to get clarification that they are entitled to compensation equivalent to two months' rent. The tenant agrees that there is another hearing pending in December, 2013 concerning the matter of the Two Months Notice.

At the hearing the tenant attending provided a new forwarding address. The landlord took note of that address and the tenants are considered to have provided a forwarding address in writing for the purposes of the *Act*.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 46(4)(a) of the *Act* which states:

*Within 5 days after receiving a notice under this section, the tenant may*

*(a) pay the overdue rent, in which case the notice has no effect,*

As there was no overdue rent at the time the Notice was issued to the tenant on August 02, 2013 then the Notice would have no effect and the tenant did not have to file an application for Dispute Resolution to cancel the Notice. Therefore it is my decision that

the landlord should not have to reimburse the tenant the \$50.00 filing fee for the cost of this application. If the tenant and landlord have other issues concerning compensation for a Two Month Notice served under s. 49 of the *Act* then those issues will be dealt with at the hearing to be held in December 2013.

### Conclusion

The 10 Day Notice to End Tenancy for unpaid rent has no effect and is therefore cancelled.

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 16, 2013

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Residential Tenancy Branch

