



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR AAT FF

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), for an order directing the landlord to allow the tenant or the tenant's guests access to the unit or site, and to recover the cost of the filing fee.

The tenant attended the teleconference hearing as scheduled. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on August 20, 2015. The tenant provided a registered mail tracking number with receipt in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the address for the landlord. According to the online registered mail tracking website information, the landlord signed for and accepted the registered mail package on August 24, 2015. As a result, I find the landlord was duly served on August 24, 2015, the day she signed for the registered mail package.

The tenant provided affirmed testimony, was provided the opportunity to present his evidence orally and in documentary form prior to the hearing, and make submissions to me. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matter

At the outset of the hearing, the tenant testified that on September 1, 2015, he was forced out of the rental unit when two of the landlord's friends, Tim and Joe, attended at the rental unit. The tenant also stated that in addition to feeling threatened, he moved out of the rental unit due to the stress the landlord had caused him during the tenancy.

As the tenancy has ended, I do not find it necessary to consider the tenant's request for an order directing the landlord to allow the tenant or the tenant's guests, access to the rental unit or site. As the tenant requested a decision on whether the landlord's 10 Day Notice was valid under the *Act* I will address that in this decision. I make no findings on whether the tenant was forced out of the rental unit as that matter was not properly before me.

### Issues to be Decided

- Did the landlord issue a valid 10 Day Notice and if so, should it be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The tenant testified that a fixed term tenancy agreement began on September 1, 2014 and was scheduled to revert to a month to month tenancy after September 1, 2015. The tenant stated that he did not submit a copy of the tenancy agreement as the landlord did not provide him with a copy of the tenancy agreement. The tenant stated that monthly rent of \$650 was due on the first day of each month. The tenant testified that a security deposit and pet damage deposit was not a part of the tenancy agreement.

The tenant testified that the landlord called him on August 13, 2015 early in the morning to give him 36 hours to vacate the rental unit. The tenant stated that on August 22, 2015 he then received a text from the landlord scheduling a move out inspection at 4:00 p.m. on August 24, 2015. The tenant stated that the landlord did not issue a 10 Day Notice in writing to the tenant at any time.

### Analysis

Based on the documentary evidence and the tenant's undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**10 Day Notice issued by landlord** – Section 52 of the *Act* requires that when a landlord gives a notice to end tenancy to a tenant, the notice must be in the approved form, must be signed and dated by the landlord giving the notice, give the address of the rental unit, state the effective date of the notice, and except for a notice under section 45(1) or 45(2), state the grounds for ending the tenancy.

Based on the above, I find the landlord phoning the tenant and later texting the tenant requesting that the tenant vacate the rental unit is not a valid 10 Day Notice pursuant to

sections 46 and 52 of the *Act*. As a result, I find the landlord's actions to have no force or effect on the tenancy and was an invalid attempt to end the tenancy.

As described above; however, the tenancy did end on September 1, 2015 when the tenant moved out of the rental unit. I make no findings on whether the tenant was forced out of the rental unit on September 1, 2015.

I grant the tenant the recovery of the cost of the **\$50** filing fee pursuant to section 72 of the *Act*.

### Conclusion

The landlord did not issue a valid 10 Day Notice.

The tenant has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$50 for the recovery of the cost of the filing fee. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 30, 2015

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Residential Tenancy Branch

