



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

This hearing convened as a result of the Tenants' Application for Dispute Resolution wherein the Tenants sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on September 3, 2015 (the "Notice") and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

At the outset of the hearing the Landlord testified that the Tenants had vacated the rental unit at the end of September 2015. The Tenants testified that they vacated at the end of October 2015 and stated that the move out condition inspection report was completed on October 31, 2015.

In any case, the parties agreed that the Tenants had vacated the rental unit such that the Tenants' Application to cancel the Notice was not required.

Issue to be Decided

Are the Tenants entitled to recover their filing fee?

Background and Evidence

The Tenants testified that although the Notice was dated September 3, 2015, they received the Notice on October 4, 2015. They further testified that the Notice was taped to the rental unit door rather than personally served as claimed by the Landlord.

The Tenants stated that they also gave written notice to end the tenancy on September 26, 2015 which was to be effective October 31, 2015.

The Landlord confirmed she made a formal request for payment of utilities at the beginning of September. She testified that on October 4, 2015, after the 30 days passed and the Tenants had not paid the outstanding amounts, she served the Notice on the Tenants. She also confirmed that the effective date of the Notice was erroneously noted as September 13, 2015.

Analysis

A tenant who receives a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities has five days from the date of service of the Notice to file for dispute resolution. Should a tenant fail to dispute the Notice, they are conclusively presumed, pursuant to section 46(5)(a) and (b), to accept the end of the tenancy and move from the rental unit on the effective date.

Although the Tenants also gave notice to end the tenancy effective October 31, 2015, they had no option but to dispute the Landlord's Notice, as the effective date was erroneously noted by the Landlord and had, in fact, already passed when they were served.

Accordingly, I find the Tenants are entitled to recover the filing fee; the Tenants are granted a Monetary Order for \$50.00. This Order must be served on the Landlord by the Tenants. Should the Landlord not pay this amount to the Tenants, the Order may be filed in the B.C. Provincial Court (Small Claims Division) and enforced as an Order of that Court.

Conclusion

The Tenants vacated the rental unit such that their request to cancel the Notice was no longer applicable.

The effective date of the Notice was erroneously noted by the Landlord as September 13, 2015 such that while the Tenants were not served the Notice until October 4, 2015, the effective date had already passed when they were served rendering an application to dispute the Notice necessary. Consequently, the Tenants are entitled to recover their filing fee and are granted a Monetary Order for \$50.00.

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: December 08, 2015

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Residential Tenancy Branch

