



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASTLE MANAGEMENT LTD.,  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MT, CNC, CNR

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46; and
- cancellation of the landlord's 1 Month Notice pursuant to section 47.

While the respondents' agent attended the hearing by way of conference call, the tenants did not, although I waited until 1110 in order to enable the applicants to connect with this teleconference hearing scheduled for 1100

### Preliminary Issue – Waiver

The 10 Day Notice issued was dated 9 May 2016 and set out an effective date of 19 May 2016. There was no 1 Month Notice on file and I have not considered it; however, the same analysis set out below may apply to the 1 Month Notice.

The parties entered into a mutual end to tenancy agreement on 18 May 2016 with an effective end date of 30 June 2016 (the First Mutual End). On 14 June 2016 the parties entered into a second mutual end to tenancy agreement on 14 June 2016 with an effective end date of 31 August 2016 (the Second Mutual End).

Both the First Mutual End and Second Mutual End may constitute waiver of certain rights by the landlords. *Residential Tenancy Policy Guideline, 11. Amendment and Withdrawal of Notices* provides information on waiver:

There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right.

By entering into the First Mutual End, after the issuance of the 10 Day Notice but before that notice's effective end date, the landlords expressly waived their right to enforce the 10 Day Notice. By entering into the Second Mutual End, after entering into the First Mutual End but before that agreement's effective end date, the landlords waived their right to enforce the First Mutual End.

For these reasons, I find that the landlords have waived their right to enforce the 10 Day Notice and the First Mutual End. Nothing in this decision interferes with the landlords' ability to seek enforcement of the Second Mutual End by way of an application to the Residential Tenancy Branch.

### Conclusion

The 10 Day Notice is cancelled as enforcement has been waived.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 17, 2016

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Residential Tenancy Branch