



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order to recover the filing fee for this application - Section 72.

I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing in person on May 10, 2016 in accordance with Section 89 of the Act. The Landlord did not attend the hearing. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on May 1, 2014. Rent of \$725.00 is payable on the first day of each month. On May 6, 2016 the Tenant received a 10 day notice to end tenancy for unpaid rent (the “Notice”). That same day the Tenant had paid the full amount of rent for May 2016. The Tenant does not owe any rental arrears.

The Tenant claims a cancellation of the Notice.

### Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Further where the tenant pays the overdue rent within 5 days after receiving the notice the notice has no effect. Based on the Tenant's undisputed evidence I find that the rent was either paid on the day the Notice was issued for was paid within 5 days of receipt of the Notice. Either way, the Notice is not valid and the Tenant is entitled to its cancellation. The tenancy continues.

As the Tenant's application had merit I find that the Tenant is entitled to recovery of the **\$100.00** filing fee. The Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

### Conclusion

The Notice is cancelled and of no effect. I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 08, 2016

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Residential Tenancy Branch