



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Code CNR FF O

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, submitted to the Residential Tenancy Branch on April 29, 2016 (the "Application").

The Tenants apply for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 26, 2016 (the "10 Day Notice"); a monetary order for loss of quiet enjoyment; and an order for recovery of the filing fee.

Both parties appeared at the hearing. The Tenants were both represented by T.J. The Landlord was represented by D.L. and L.W. All parties giving evidence provided solemn affirmations.

The Tenants provided an evidence package, which was received by the Landlord. The Landlord did not submit documentary evidence.

Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

### Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to be addressed was whether or not the tenancy will continue. The monetary claim advanced by the Tenant is unrelated to this central issue. Accordingly, I find it appropriate to exercise my discretion to dismiss the Tenants' claim for a monetary order for loss of quiet enjoyment, with leave to reapply at a later date.

### Issues to be Decided

Are the Tenants entitled to an order cancelling the 10 Day Notice?

Are the Tenants entitled to a monetary order for repayment of the filing fee?

### Background and Evidence

The Tenants provided with their documentary evidence a copy of the tenancy agreement between the parties. It confirms a fixed-term tenancy for the period from July 1, 2015 to June 30, 2016. Thereafter, the tenancy may continue on a month-to-month basis. Rent in the amount of \$980.00 per month is due and payable on the first day of each month. An addendum to the tenancy agreement permits the Landlord to charge an administrative fee of \$25.00 for late payment of rent.

The Landlord issued the 10 Day Notice on April 26, 2016. The Tenants' Application confirms the 10 Day Notice was received on the same date.

On behalf of the Landlord, D.L. advised the 10 Day Notice was issued as a result of outstanding administrative fees charged to the Tenants for late payments of rent in February and April 2016. Specifically, D.L. advised that February rent was received on February 9, 2016, and that April rent was paid on April 5, 2016. D.L. also indicated that June rent has not yet been paid.

In response, J.T. acknowledged that rent was paid late on these occasions, and previously. However, he says the late payments in dispute were either due to problems with the debit payment system, or because the Landlord's agent refused to accept payment in advance.

D.L. flatly denies any offer of payment would be refused, noting they accept money orders. L.W. testified she had no recollection of refusing payment.

J.T. asked that I consider whether or not outstanding administrative fees for the late payment of rent were an appropriate basis for issuing the 10 Day Notice.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 46 of the *Act* permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due.

Rent is defined in the *Act* as "money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities".

The definition of rent, however, excludes security deposits, pet damage deposits, and fees prescribed under 97(2)(k) of the *Act*. Reference to this provision confirms that rent does not include “refundable and non-refundable fees that a landlord may or may not impose on a tenant”.

The Tenants submitted that outstanding administrative fees for late payment of rent are not a sufficient basis to end a tenancy. I agree. I find that while a landlord may seek to end a tenancy for repeated late payments of rent, or a monetary order for outstanding administrative fees due to the landlord, administrative fees are not rent as defined in the *Act*, and were therefore not a basis for issuing the 10 Day Notice.

Accordingly, the 10 Day Notice is cancelled, and the tenancy continues.

As the Tenants have been successful, they are entitled to recover the \$100.00 filing fee, which may be deducted from rent for the month of July 2016.

#### Conclusion

Pursuant to the Residential Tenancy Branch Rule of Procedure 2.3, the Tenants' Application for a monetary order for loss of quiet enjoyment is dismissed, with leave to reapply.

In addition, the 10 Day Notice is cancelled and the tenancy continues subject to the *Act*, the Regulations, and the tenancy agreement between the parties.

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 02, 2016

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Residential Tenancy Branch