



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") dated July 4, 2016 pursuant to section 46;
- cancellation of the landlord's 10 Day Notice dated August 2, 2016 pursuant to section 46;

The tenant and landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord confirmed receipt of the tenant's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application.

### Issue(s) to be Decided

Should the landlord's 10 Day Notice dated July 4, 2016 be cancelled? If not, is the landlord entitled to an order of possession?

Should the landlord's 10 Day Notice dated August 2, 2016 be cancelled? If not, is the landlord entitled to an order of possession?

### Background and Evidence

As per the testimony of the parties, the tenancy began on May 1, 2008 on a month-to-month basis. Rent in the amount of \$805.70 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$262.50 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant confirmed receipt of the 10 Day Notice, dated July 4, 2016, posted to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on July 7, 2016, three days after its posting. This 10 Day Notice indicated rent in the amount of \$805.70 due July 1, 2016 remained outstanding.

Both parties acknowledge the tenant provided a debit payment to the landlord on July 29, 2016 in the amount of \$805.70.

The tenant confirmed receipt of the 10 Day Notice, dated August 2, 2016, posted to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's second 10 Day Notice on August 5, 2016, three days after its posting. This 10 Day Notice indicated rent in the amount of \$805.70 due August 1, 2016 remained outstanding.

#### *Tenant*

In relation to July's rent, the tenant testified that on June 30, 2016 he slipped a cheque in the amount of \$805.70 into the landlord's mailbox. The tenant provided pictures showing a cheque being deposited into a mailbox. The tenant testified that he took the pictures on June 30, 2016 in the event he would have to prove his rent was paid. The tenant had heard from other tenants that the landlord had been issuing notices for non-payment of rent.

The tenant testified that after he received the 10 Day Notice dated July 4, 2016 he checked his banking records and discovered the cheque for July's rent had not been cashed. The tenant then filed an application to dispute the 10 Day Notice.

In relation to August rent the tenant contends that the debit payment he made on July 29, 2016 constitutes rent for August. The tenant created a receipt for this debit payment and had a clerk of the landlords sign the receipt. The receipt indicates rent in the amount of \$805.70 for the month of August was paid July 29, 2016.

#### *Landlord*

The landlord testified that the landlord did not receive a cheque for July rent. The landlord acknowledged a clerk signed the tenant's receipt indicating August rent was paid, however this July 29, 2016 payment was applied to the outstanding July rent. The landlord testified that rent for August remains outstanding.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent and utilities the tenant may, within five days, pay the overdue rent and utilities or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Although the tenant contends that on June 30, 2016 he left a cheque for July's rent in the landlord's mailbox, and provided pictures to substantiate this, I find it more probable that the tenant did not provide this cheque. The tenant was issued a 10 Day Notice, became aware that the July rent cheque had not been cashed yet the tenant's reply was to file an application for dispute resolution. This response is not congruent with a tenant who has remitted a rent cheque, becomes aware the cheque has not been cashed and receives a 10 Day Notice. I find it more probable that a tenant in receipt of a 10 Day Notice who has remitted a rent cheque that remains uncashed would issue a new cheque or pay cash within five days of receiving the 10 Day Notice to ensure the tenancy would continue. The pictures the tenant provided are not dated stamped and hence carry little weight. For these reasons, I find the tenant has not proven beyond a reasonable doubt that rent for July was remitted on June 30, 2016.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. I find that rent for July was paid by debit on July 29, 2016, well past the first of the month or the five days allotted by the 10 Day Notice. Therefore, I dismiss the tenant's application to cancel the 10 Day Notice dated July 4, 2016.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. Accordingly I dismiss the tenant's application to cancel the 10 Day Notice dated July 4, 2016 and find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

As a finding has been made in relation to the 10 Day Notice dated July 4, 2016, and the tenancy is set to end, a finding on the 10 Day Notice dated August 2, 2016 is not required. This portion of the tenants claim is dismissed without leave to reapply.

Conclusion

I grant an order of possession to the landlord effective two (2) days after service on the tenant.

The tenants claim to dismiss the landlord's 10 Day Notice dated August 2, 2016 is dismissed without leave to reapply.

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: August 19, 2016

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Residential Tenancy Branch