



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR   FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on August 3, 2016 (the "Application").

The Tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 2, 2016 (the "10 Day Notice"); and an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf and provided his solemn affirmation. The Landlord was not represented at the hearing.

The Tenant testified that his hearing package, including the Notice of a Dispute Resolution Hearing and supporting evidence, was served on the Landlord by registered mail on August 6, 2016. In support, a Canada Post Customer Receipt was included with the Tenant's documentary evidence. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to be received five days later. Accordingly, I find the Notice of a Dispute Resolution Hearing and the Tenant's supporting evidence are deemed to be received by the Landlord on August 11, 2016.

The Tenant was provided with the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

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.

### Issues to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

Although a written tenancy agreement was not provided, the Tenant confirmed the tenancy began on January 1, 2015. After a fixed term of one year, the tenancy continued on a month-to-month basis. Currently, rent in the amount of \$1,003.27 per month is due on the first day of each month.

In addition, the Tenant confirmed the 10 Day Notice was found posted on the door of his rental unit on August 2, 2016. The Tenant testified he took immediate steps to pay the rent. The Tenant included with his documentary evidence copies of debit receipts showing two payments to the Landlord on August 3, 2016. The payments totalled \$1,003.27.

The Tenant confirmed he brought the Application out of an abundance of caution.

### 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 take steps to end a tenancy when rent remains unpaid on any day after the day it is due. On receipt of a valid notice to end tenancy, a tenant has five days to either pay the outstanding rent or file an application to dispute the notice. Failure to do either of these results in the conclusive presumption the tenant has accepted the tenancy ends on the effective date of the notice.

In this case, the Tenant's evidence confirms rent was paid in full on August 3, 2016, one day after receiving the 10 Day Notice. Accordingly, I find the Tenant's Application is successful and the 10 Day Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, and in the absence of any evidence from the Landlord, I award the Tenant recovery of the \$100.00 filing fee paid to commence these proceedings, and I order that this amount may be deducted from a future month's rent.

Conclusion

The Tenant's Application is successful and the 10 Day Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

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: September 21, 2016

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Residential Tenancy Branch

