



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RBL HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **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) pursuant to section 46.

The tenants attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenants stated that the landlord was served with the notice of hearing package in person on November 8, 2016. A communication error occurred within the Residential Tenancy Branch where the hearing was not conducted on December 21, 2016. Both participants were contacted by the Branch and were advised of the new scheduled hearing at the same time on December 22, 2016. Both parties confirmed notice of the new scheduled hearing date. As such, I accepted undisputed affirmed evidence of the tenant and find that the landlord was properly served as per sections 88 and 89 of the Act. The landlord is deemed served on November 8, 2016 as per section 90 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant provided undisputed affirmed evidence that the 10 Day Notice dated November 1, 2016 was received from the landlord on November 2, 2016 in person via the landlord's agent. The 10 Day Notice sets out that the tenant failed to pay rent of \$214.00 that was due on November 1, 2016 and provides an effective end of tenancy date of November 12, 2016.

The tenant confirmed that rent was not all paid as per the notice stating that \$600.00 of the \$810.00 monthly rent was paid and that subsequently the remaining portion of the unpaid rent was later paid to the landlord. The tenant also stated that the landlord told her that no further action would be made by the landlord as all rental arrears were paid. The tenant also stated that December rent of \$810.00 was paid and accepted by the landlord.

### Analysis

Section 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide evidence that she was entitled to withhold rent or as a result of a prior order from the Residential Tenancy Branch.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant provided undisputed affirmed evidence that the landlord accepted late payment of rent for November and December of 2016. The tenant also provided undisputed affirmed evidence that the landlord notified her that the landlord would no longer be pursuing an end to the tenancy as all rental arrears were paid.

I accept the undisputed affirmed evidence of the tenant and find that the landlord reinstated the tenancy by accepting the late payment of rent beyond the effective end of tenancy date. As well I find that the landlord has not provided notice to the tenant that rent was being accepted for "use and occupancy only" and has therefore reinstated the

tenancy. The 10 Day Notice dated November 1, 2016 is set aside and the tenancy shall continue.

Conclusion

The tenant's application to cancel the 10 Day Notice dated November 1, 2016 is granted.

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: December 22, 2016

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Residential Tenancy Branch