



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**      CNR

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 47.

The landlords did not attend this hearing, which lasted approximately 20 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she personally served the application for dispute resolution on an agent of the landlord on November 15, 2016. The tenant testified that she arranged to meet the landlord's agent at the rental unit and served the application for dispute resolution. Based on the undisputed testimony of the tenant and in accordance with section 89 of the Act, I find that the landlord was duly served with the tenant's application on November 15, 2016, the day it was provided in person to the agent.

### **Issue(s) to be Decided**

Should the 10 Day Notice be cancelled?

### **Background and Evidence**

The tenant provided undisputed testimony regarding this tenancy. The month-to-month tenancy began in May, 2016 and the monthly rental amount is \$1,295.00. In October, 2016, the tenant sublet the rental unit. The sub-tenant moved out in November, 2016 and the tenant is unable to pay the rental amount. The tenant no longer resides in the rental unit but has left furniture and items in the rental unit.

The tenant acknowledged receipt of the 10 Day Notice and filed an application for dispute resolution on November 14, 2016.

The tenant testified that she does not dispute the reason the 10 Day Notice was issued. The tenant acknowledged that she has not paid the monthly rental amount of \$1,295.00 owed for November 1, 2016. The tenant testified that she does not have the means to pay the rent owing and does not expect that she will pay the rent for future months. The tenant testified that the application for dispute resolution was filed in the hopes of being granted additional time to remove her furniture and items from the rental unit. The tenant testified that she does not have the financial means to hire movers to remove her furniture nor does she have the financial means to secure storage space and does not know when she would have the means to make arrangements.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for non-payment of rent the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has filed the application for dispute resolution within the allotted time.

Section 55(1) of the *Act* reads in part as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52..., and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...*

When the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 10 Day Notice. While the tenant has provided testimony that she has defaulted on the rent owing, I find that the absence of the landlord prevents me from making a definitive conclusion as to the extent to which the landlord's 10 Day Notice complied with section 52 of the *Act* and was served in accordance with section 88 of the *Act*. Although I dismiss the tenant's application, I make no finding on the issuance of an Order of Possession as I find that the landlord has not met the burden of proof in establishing entitlement to any such Order.

### Conclusion

The tenants' application to cancel the landlord's 10 Day Notice, dated November 4, 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: December 15, 2016

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Residential Tenancy Branch