



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNR, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*"), seeking cancellation of the landlords' 10 Day Notice To End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"); seeking cancellation of the landlords' One Month Notice To End Tenancy for Cause (the "One Month Notice"); and for recovery of the filing fee for this application from the landlord.

The tenant appeared at the teleconference hearing and gave affirmed testimony. The landlord did not appear for the hearing which lasted 18 minutes. During the hearing the tenant was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the tenant's Application and Notice of a Dispute Resolution Hearing (the Notice of Hearing") was considered.

The tenant testified that on November 17, 2016 at just before noon he personally delivered a copy of his Application and Notice of Hearing to the clerk at the front desk of the landlord's place of business. The clerk is not a named agent for the landlord.

Section 89 of the *Act* requires the tenant's application to be given to the landlord in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant; or
- (e) as ordered by the director under section 71 (1).

Section 71 (2)(b) of the *Act* permits an Arbitrator to make an order that a document has been sufficiently served for the purposes of this *Act* on a date the Arbitrator specifies. Also, section 71(2)(c) grants an Arbitrator the authority to make an order that a document not served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*.

As the tenant's Application was left with a clerk, and not an agent of the landlord, the tenant's Application was not served in accordance with s.89 of the *Act*. However, pursuant to s.71(2)(c), I am satisfied that the landlord was sufficiently served for purposes of this *Act* as the Application was served in a manner where the Application should have been brought to the attention of the landlord by the clerk at the front desk of the landlord's place of business.

Accordingly, pursuant to s.71(2)(b) of the *Act*, I find that the landlord was sufficiently served with the tenant's Application and Notice of Hearing on November 20, 2016, three days after it was left with the clerk at the front desk of the landlord's place of business.

#### Preliminary and Procedural Matters

The tenant withdrew his claim seeking cancellation of the landlord's One Month Notice as none was issued.

#### Issue(s) to be Decided

- Should the landlord's 10 Day Notice be cancelled?

#### Background and Evidence

The testimony of the tenant established that a month to month tenancy started on June 1, 2004 pursuant to a written tenancy agreement. The tenant testified that there was a rent increase effective August 1, 2016 increasing the monthly rent to \$802.00 which is due the first day of each month.

The tenant received a 10 Day Notice dated November 14, 2016 which was posted on his door the same day. The 10 Day Notice states that the tenant failed to pay \$213.14 due on November 1, 2016 and that the tenant must move out by November 24, 2016.

The tenant testified that he paid his full November rent in the amount of \$802.00 on October 31, 2016. The tenant testified that his rent is not in arrears and that he does not owe the landlord any unpaid rent. The tenant submitted a copy of, what he testified was, his bank account statement which shows the amount of \$802.00 paid to the name of the landlord's business on October 31, 2016.

#### Analysis

Based on the undisputed evidence of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

As the landlord was served with the tenant's Application and Notice of Hearing and did not attend the hearing, I consider this matter to be unopposed by the landlord. As a result I find the tenant's application is fully successful as I find the evidence supports the tenant's claim and is reasonable.

I find that the tenant paid the full amount of rent due for November 2016 before the due date and that the tenant does not owe any unpaid rent to the landlord. Accordingly, I cancel the landlord's 10 Day Notice dated November 14, 2016 and I uphold the tenancy.

As the tenant's application is successful, the tenant is entitled to recovery of the \$100 filing fee from the landlord.

#### Conclusion

The 10 Day Notice dated November 14, 2016 has been cancelled and the tenancy continues at this time.

The tenant is awarded recovery of the filing fee and is authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 4, 2017

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Residential Tenancy Branch