



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Ledis Holdings  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MT, CNR

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking more time than prescribed to dispute a notice to end the tenancy and for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

Both tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties agree that all evidentiary material has been exchanged, and the parties were given the opportunity to question each other and give closing submissions. No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Should the tenants be granted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on January 1, 2013 and the tenants still reside in the rental unit. Rent in the amount of \$900.00 per month is currently payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants equivalent to half a month's rent at that time, but the landlord's agent does not know how much that was. The security deposit is still held in trust by the landlord, and no pet damage deposit has been collected. The rental unit is an apartment in a complex containing 6 units. A copy of the tenancy agreement has not been provided by either party.

The landlord's agent further testified that on December 2, 2016 he personally served one of the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided by the tenants. It is dated December 2, 2016 and contains an effective date of vacancy of December 13, 2016 for unpaid rent in the amount of \$900.00 that was due on December 1, 2016. On December 5, 2016 the tenants paid \$450.00 of the rent for December for which the landlord issued a receipt.

The landlord's agent went out of town on December 10, 2016 and left instructions for the secretary of the landlord company not to accept any more rent if the tenants attended to pay after December 13, 2016 which is the effective date of the notice.

On December 14, 2016 the tenants paid the balance of \$450.00 but the landlord has not accepted it, or has not cashed the cheque. The tenants contacted the landlord's agent by email on January 3, 2017 asking if January's rent would be accepted. That evening the landlord's agent responded to the email stating that rent would not be accepted until after this hearing.

The landlord's agent also testified that if the tenants' application is dismissed and the landlord obtains an Order of Possession, the landlord would be content with an effective date of vacancy of February 28, 2017.

**The first tenant** (LJB) testified that she paid \$450.00 to the landlord in cash on December 5, 2016 and believed that a cheque would be ready from the Band Office by the 13<sup>th</sup>, but it wasn't ready until the 14<sup>th</sup> of December. When the other tenant took the rent cheque to the landlord's office, he was told it was not accepted and that the tenants had to wait to give it to the landlord's agent when he returned to town on December 19, 2016. The tenant took the cheque to the landlord's agent on December 19, 2016 and he still has the cheque. The landlord's agent told the tenant that it wouldn't be accepted until the tenants signed a new tenancy agreement. The tenant took the forms with her for the other tenant to review.

The tenant believed that the tenants had until December 13, 2016 to pay the rent, but may have misread the document.

**The second tenant** (DJN) testified that he received a lay-off notice from his employment, which was a shock, and explained to the landlord's agent that if he had an eviction notice he could get money from the Band Office to pay the balance of December's rent. The notice to end the tenancy was provided, and the landlord's agent said he would talk to his mother about the late rent. The tenant made the application to the Band Office. However, the Band Office didn't have the cheque ready until the 14<sup>th</sup> of December, and if the tenant had been aware of that later date, he would have notified

the landlord's agent. Then the cheque was refused by the landlord's office, which surprised the tenant because of the payment arrangement the parties had made to pay the balance, however no specific date was discussed.

Once the tenant learned from the other tenant of a new tenancy agreement, the tenant looked it over and didn't agree with it. The new tenancy agreement said that the landlord wanted to turn it into a non-smoking unit, which was not the case from the beginning of the tenancy in 2013.

### Analysis

Firstly, a landlord must not refuse rent from a tenant. If a tenant pays rent after the effective date of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the landlord must provide a receipt or other notation that the money is being received "for use and occupancy only," meaning that it is accepted as rent already owed and does not serve to reinstate the tenancy.

The *Residential Tenancy Act* states that once served with such a notice by a landlord, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant pays the rent within that 5 day period, the notice is of no effect. If the tenant does not pay the rent in full or dispute the notice within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date of 10 days after service.

I accept the testimony of the tenant that she may have misread the document, and the testimony of both tenants that they suffered a financial hardship due to a sudden lay-off from work, and that they attempted to pay the rent on the day after the effective date of the notice. However that does not satisfy the *Residential Tenancy Act*.

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form and contains information required by the *Act*. I find that the tenants were served with it on December 2, 2016 and did not pay the rent or dispute the notice within 5 days of being served. Therefore I must find that the tenants are conclusively presumed to have accepted the end of the tenancy, and the tenants' application is hereby dismissed in its entirety.

The *Residential Tenancy Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord.

During the course of the hearing the landlord's agent advised that in the event that I dismiss the tenants' application, the landlord will be content with an effective date of vacancy of an Order of Possession of February 28, 2017, and I so order.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety.

I hereby grant an Order of Possession in favour of the landlord effective February 28, 2017 at 1:00 p.m.

This order is final and binding and may be enforced.

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: January 20, 2017

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Residential Tenancy Branch