



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated December 5, 2016
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Notice to End Tenancy was served on the Tenant on December 5, 2016. The tenant testified he texted the landlord to arrange a time to meet to give the landlord a copy of the Application for Dispute Resolution. The landlord refused to meet with the Tenant in order to be served with the Application for Dispute Resolution. The Tenant then attempted to serve by registered mail but he failed to correctly identify the landlord's residence. The documents were returned. The tenant thought it prudent to serve the landlord through a second method of service and on December 19, 2016 he placed a copy of the Application for Dispute Resolution/Notice of Hearing in the landlord's mailbox located at the address set out on the Notice to End Tenancy and tenancy agreement. He testified he has texted the landlord on other occasions but the landlord refuses to contact him. I determined there has been sufficient service.

I ordered that the address of the landlord on the Application for Dispute Resolution be amended to provide that he lives at 13A Avenue and not 13 Avenue. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated December 5, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on September 1, 2016 when the parties entered into a one year fixed term tenancy agreement that provided that the rent was \$2750. The Tenant paid a security deposit of \$1375 prior to the start of the tenancy.

The parties failed to provide a copy of the Notice to End Tenancy. However, the Tenant testified it is dated December 5, 2016 and sets the end of tenancy for December 15, 2016. It alleges that the sum of \$5400 is owed.

The tenant testified he paid the landlord a portion of the rent for December. He had just returned from the hospital and the landlord agreed to wait until the middle of December for the payment of the balance of the rent as the Tenant was not able to make it to the bank. The landlord has not returned to pick up the balance of the rent. Since then the furnace has broken down. The landlord failed to fix the furnace despite being requested to do so by the Tenant. The tenant paid a deposit of \$2500 to the furnace company around the third week of December. The furnace has been fixed. The total bill rendered by the furnace company is \$5400 plus \$100 thermostat. The tenant will be paying the furnace company the balance of the bill. The landlord has failed to respond to the Tenant's efforts to contact him. . .

### Analysis:

The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities.

I determined the landlord failed to present sufficient evidence to establish cause to end the tenancy as the landlord failed to attend the hearing or provide evidence.

Further, it may be that the tenant's payment to the furnace company of \$2500 is an emergency repair and this sum when combined with the part payment he made to the landlord satisfies the rent for December. It is not necessary for me to make a determination on this issue at this time as both parties were not before me.

### Determination and Orders:

After carefully considering all of the evidence I ordered that the 10 day Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has been successful I ordered that the landlord pay to the Tenant the cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

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 09, 2017

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Residential Tenancy Branch