



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ISLAND COMMUNITY MENTAL HEALTH  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, CNR

### Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenant seeks:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46;

The landlord seeks:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was represented by her advocate who spoke on her behalf (the “tenant”). The landlord KF primarily spoke on behalf of the landlord (the “landlord”).

As both parties were in attendance I confirmed there were no issues with service of the 10 Day Notice or the parties’ respective applications and evidence. The landlord testified that the 10 Day Notice was served on the tenant by registered mail on January 5, 2017. As the tenant confirmed receipt of the 10 Day Notice, I find that she was duly served with this Notice in accordance with section 88 of the *Act*.

The landlord confirmed receipt of the tenant’s dispute resolution package, notice of hearing and evidentiary materials. The tenant confirmed receipt of the landlord’s dispute resolution package, notice of hearing and evidentiary materials. In accordance with sections 71(2), 88 and 89 of the *Act*, I find that both parties were duly served with all of the respective materials.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award as claimed?

Background and Evidence

The parties agreed on the following facts. This month to month tenancy began in June, 2012. The current monthly rent is \$320.00 payable on the first of the month. The tenant receives a housing subsidy from the provincial government (the "Ministry") and rent payments are issued by cheque and sent directly to the landlord.

The tenant sent an email to the landlord on September 30, 2016 which was interpreted by the landlord as the tenant's notice to end tenancy. That email is the subject of a decision made by another Arbitrator under the file numbers indicated on the first page. The landlord testified that on or before November 1, 2016 a rent cheque in the amount of \$320.00 for November rent was received from the Ministry. The landlord initially processed and cashed the rent cheque. After filing an application for dispute resolution which is the subject of the earlier decision by another Arbitrator, the landlord issued a cheque for the full amount of \$320.00 to the Ministry as a refund of the November rent.

The parties confirmed that the December rent payment from the Ministry was returned without being cashed by the landlord. In December, the landlord informed the Ministry that the tenancy had ended. The Ministry stopped issuing rent payments and there was initially no payment for January.

The landlord testified that the rental arrears on January 5, 2017, the date of the 10 Day Notice was \$960.00. The landlord testified that a cheque in the amount of \$640.00 from the Ministry was received on January 12, 2017. This payment was for the December 2016 and January 2017 rent. The landlord testified that the tenancy remains in arrears by \$320.00 for November, 2016 as at February 2, 2017 the date of the hearing.

The tenant testified that the landlord told the Ministry that the tenancy had ended without her knowledge or consent. The tenant said that upon learning that monthly rent payments had been cancelled she has contacted the Ministry and reinstated the monthly rent payments. The tenant said that there is no rental arrear as all rent payments have been issued to the landlord. The tenant argues that she cannot be held responsible for the November rent payment which was accepted, processed and cashed by the landlord. She says that the refund issued to the Ministry was done on the landlord's own accord and should have no bearing on her tenancy.

### Analysis

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 arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant is deemed to have received the 10 Day Notice on January 10, 2017. The tenant filed her application of dispute resolution on January 11, 2017 within the five day limit provided under the *Act*. In addition the Ministry issued rent payment in the amount of \$640.00 which was received and accepted by the landlord on January 12, 2017.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord stated that even after accepting the January 12<sup>th</sup> payment by the Ministry there is a rent arrear of \$320.00.

The tenant argues that the full rental amount of \$320.00 was paid by the Ministry in November, 2016 and accepted by the landlord. The tenant says that the fact that the landlord issued a cheque to the Ministry for that amount after initially accepting payment has no bearing on her tenancy.

I find that the landlord was paid the rent for November, 2016. I find that the landlord accepted the rent payment by processing and cashing the cheque. I find that the subsequent act of sending the equivalent amount to the Ministry as a refund had no effect on the fact that payment was accepted in full for that month. I find that there was no rental arrear for November, 2016. I further find that the landlord accepted the Ministry payment of January 12, 2017 and reinstated the tenancy. Based on the evidence of the parties I find that there is no rental arrear for this tenancy as of the date of the hearing. Therefore, I find that the landlord has not established the evidentiary basis in order for the 10 Day Notice to be upheld.

### Conclusion

The landlord's 10 Day Notice, dated January 5, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: February 6, 2017

---

Residential Tenancy Branch