



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, RR, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated January 12, 2017 ("10 Day Notice"), pursuant to section 46;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords did not attend this hearing, which lasted approximately 35 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 hearing began at 9:30 a.m. At 9:55 a.m., the tenant disconnected from the conference without warning. I waited an extra ten minutes until 10:05 a.m. for the tenant to call back in but he never did. I ended the hearing at 10:05 a.m. after hearing extensive testimony from the tenant.

The tenant testified that he served each of the landlords separately with a copy of the tenant's application for dispute resolution hearing package on January 19, 2017, both by way of registered mail to the landlords' address for service provided on the 10 Day Notice. The tenant provided two Canada Post tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were deemed served with the tenant's application on January 24, 2017, five days after their registered mailings.

The proof of service on the 10 Day Notice indicates that the tenant was personally served with it on January 13, 2017. The effective move-out date on the notice is

January 23, 2017. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlords' 10 Day Notice on January 13, 2017.

### Issues to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an order of possession?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order to allow him to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for his application?

### Background and Evidence

The tenant testified that this tenancy began on December 1, 2016. He maintained that he did not sign a written tenancy agreement. He explained that his tenancy began with one landlord and later two new landlords moved into the basement of the same house and became his landlords without prior notice. He claimed that this happened while his former landlord was in the hospital. The two new landlords issued the 10 Day Notice to him. The rental unit is the upper floor of the same house in which the two landlords live in the basement.

The tenant confirmed that he had already vacated the rental unit on January 15, 2017 and was not planning to move back in, just to retrieve the remainder of his belongings and return the keys to the landlords. When I asked the tenant if he required his relief to cancel the 10 Day Notice, he said he did not know and still had possession of the unit at this time.

The tenant seeks a monetary order of \$3,350.00 and a rent reduction. He said that he paid \$5,000.00 to the landlords and moved out in the same month. He claimed that he did not want to live in the same house as the two landlords who have a vicious dog because the tenant has his own dog. He also maintained that there were numerous repair issues with the rental unit when he moved in, so that is also why he moved out. The tenant said that he is entitled to move-in expenses, move-out expenses, the security deposit and first month's rent that he already paid to his new landlord for the

new unit. The tenant stated that he did not provide any documentary proof of expenses or costs because no one told him to and he did not know that he needed to provide it.

### Analysis

In accordance with section 46(4) of the *Act*, the tenant must file his application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on January 13, 2017 and filed his application on January 17, 2017. Accordingly, I find that the tenant's application was filed within the five day time limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlords to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlords did not appear at this hearing to provide evidence. The landlords did not meet their onus of proof. Therefore, the landlords' 10 Day Notice, dated January 12, 2017, is cancelled and of no force or effect. Since the tenant has already vacated his rental unit and does not intend to move back in, he has already ended his tenancy.

As the tenant provided no documentary evidence to confirm any of his expenses or costs, I dismiss his claim for \$3,350.00 in compensation and for a rent reduction. The tenant provided no documentary proof of moving expenses, that he moved into a new place, paid a security deposit or first month's rent.

As the tenant was mainly unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlords.

### Conclusion

I allow the tenant's application to cancel the landlords' 10 Day Notice. The landlords' 10 Day Notice, dated January 12, 2017, is cancelled and of no force or effect. The remainder of the tenant's application 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: February 14, 2017

---

Residential Tenancy Branch

