



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR MNR CNR FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

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

The tenants requested:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another

Both parties confirmed receipt of each other's applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants were duly served with the Applications and evidence.

The landlords provided undisputed testimony that the tenants were personally served with the 10 Day Notice, with an effective date of February 16, 2017, on February 6, 2017. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on February 6, 2017.

### **Issue(s) to be Decided**

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

Are the landlords entitled to a Monetary Order for Unpaid Rent and Utilities?

Are the tenants entitled to recover the cost of the filing fee for this application?

### **Background and Evidence**

The landlords testified regarding the following facts. This fixed term tenancy began on September 1, 2016, with monthly rent set at \$1,050.00, payable on the first of each month. The tenants continue to reside in the rental unit.

The landlords issued the 10 Day Notice on February 6, 2017 to the tenants, indicating an effective move-out date of February 16, 2017. The landlords testified that the tenants were issued the 10 Day Notice for failing to pay \$50.00 in outstanding rent for December 2016, as well as the entire monthly rent for the months of January and February 2017, and utilities in the amount of \$150.74.

During the hearing, the tenants had indicated that there were two prior hearings held pertaining to this tenancy, and the same parties. The first matter was an ex-parte Direct Request application filed on January 26, 2017, which pertained to a prior 10 Day Notice issued by the landlord on January 11, 2017. This matter was dismissed on February 3, 2017 by the Adjudicator, and the 10 Day Notice was cancelled. The tenants had filed a separate application to cancel the 10 Day Notice, dated January 11, 2017, on February 1, 2017, and a hearing was scheduled for March 2, 2017. The matter was heard before an Arbitrator, and the tenants' application was considered moot as the 10 Day Notice was already cancelled on February 3, 2017.

The tenants, in this hearing, testified that they had attempted to make payment on January 30, 2017 by way of money order, but the landlords had refused payment. The tenants were told by the landlords that the matter was already before the Residential Tenancy Board, and that was why payment was refused. The tenants filed their application to cancel the previous 10 Day Notice two days later on February 1, 2017. That 10 Day Notice was cancelled on February 3, 2017 by the Adjudicator. A new 10 Day Notice was issued by the landlords on February 6, 2017.

The landlords testified that the tenants had indicated that they were going to drop by on January 23, 2017 with payment, but did not do so until January 30, 2017. The landlords

did not dispute the fact that the tenants had attempted to make payment on January 30, 2017, or the fact that they had refused to accept payment on that date as the matter was before the Residential Tenancy Branch.

The tenants are requesting the cancellation of the 10 Day Notice issued on February 6, 2017 as they had attempted to make payment on January 30, 2017, but it was refused.

### **Analysis**

#### **Landlord's notice: non-payment of rent**

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The 10 Day Notice that this hearing pertains to, was issued on February 6, 2017 for rent \$2,150.00 in outstanding rent, and \$150.74 in outstanding utilities that were not paid by February 6, 2017.

Section 26 of the *Act* requires that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” I accept the tenants’ sworn, undisputed testimony that they had attempted to make payment to the landlords, but the landlords had refused payment as the matter was before the Residential Tenancy Branch.

Although the landlords had previously filed for a Direct Request Hearing on January 26, 2017, the tenants were still required to pay rent per section 26 of the Act. The landlords did not dispute the fact that they had refused this payment stating that this matter was before the Residential Tenancy Branch. I find that the second 10 Day Notice was issued after the tenants had attempted to make payment, which was refused by the landlords, and therefore I find that the issuance of this 10 Day Notice does not comply with Section 46(1) of the Act. Based on these circumstances I am allowing the tenant’s application to cancel the 10 Day Notice dated February 6, 2017, and this tenancy is to continue as per the *Act*. The landlords’ application is dismissed in its entirety.

As the tenants were successful in their application, I am allowing them to recover the \$100.00 filing fee for this application.

**Conclusion**

I allow the tenants' application, and the 10 Day Notice is cancelled. The 10 Day Notice of February 6, 2017 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00 for recovery of the filing fee for this application, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 21, 2017

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Residential Tenancy Branch