



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

On February 28, 2017, the Tenants made an Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 23, 2017.

The matter was set for a conference call hearing. The Tenant attended the hearing; however, the Landlord did not.

The Tenant provided affirmed testimony that he served the Landlord with the Notice of Hearing in person on March 3, 2017. I find that the Landlord was served with notice of the hearing in accordance with section 89 of the *Residential Tenancy Act*.

At the start of the hearing I introduced myself and the hearing process was explained. The Tenant was provided with an opportunity to ask questions about the hearing process. The Tenant was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Residential Tenancy Branch received one page of documentary evidence from the Landlord on March 21, 2017.

The Tenant testified that he did not receive any documents from the Landlord except the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 23, 2017.

The Landlord did not attend the hearing and the Landlord's one page of evidence was not served to the Tenant, and was not considered in this hearing.

### Issues to be Decided

- Should the 10 Day Notice dated February 23, 2017, be cancelled?
- Is the Landlord entitled to an order of possession?

### Background and Evidence

The Tenant testified that the tenancy began on October 1, 2016, as a month to month tenancy. The Tenant pays rent in the amount of \$1,200.00 per month, plus utilities. The Tenant paid the Landlord a security deposit of \$600.00. A written tenancy agreement was not provided.

The Tenant testified that he received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 23, 2017, directly from the Landlord K.M. on February 23, 2017.

The Notice states that the Tenant has failed to pay utilities in the amount of \$334.95 after a demand on November 30, 2016, and January 15, 2017.

The Notice informed the Tenant that the Notice would be cancelled if the utilities were paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant disputed the Notice within the 5 day timeframe.

The burden of proof to support ending a tenancy rests with a Landlord when a notice to end tenancy is issued. The Landlord did not attend the hearing. The line remained open while the phone system was monitored for ten minutes and the Landlord did not call into the hearing during this time.

### Analysis

Section 46 (6)(b) of the Act states that a Landlord may treat unpaid utility charges as unpaid rent and may give notice if the utility charges are unpaid more than 30 days after the Tenant is given a written demand for payment of them.

I find that the Landlord issued the Tenant a 10 Day Notice to End Tenancy for Unpaid Utilities dated February 23, 2017, but failed to attend the hearing to support the notice. Therefore, as the Landlord did not attend the hearing by 9:10 am, I cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 23, 2017.

The tenancy will continue until ended in accordance with the Act.

Conclusion

The Landlord was served with the Notice of Hearing and failed to attend the hearing.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 23, 2017, is cancelled.

The tenancy will continue until 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: March 29, 2017

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Residential Tenancy Branch