



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR FF O OLC

### Introduction

The tenant requested:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) pursuant to section 46 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*;
- an Order directing the landlord to comply with the *Act* pursuant to section 62 of the *Act*; and
- Other unspecified relief.

The tenants attended the hearing while the landlord did not. The tenants were given full opportunity to be heard, to present their sworn testimony, to make submissions and present evidence under oath. The hearing lasted approximately 15 minutes.

The tenants stated they were served with a 10 Day Notice on March 9, 2017. This notice was given to them in person. Pursuant to section 89 of the *Act*, the tenants are found to have been served with the 10 Day Notice.

The tenants stated that they sent their application for dispute resolution to the landlord by way of Registered Mail on March 17, 2017. A copy of the Canada Post Receipt and tracking number were provided to the hearing. Pursuant to sections 89 and 90 of the *Act* the landlord is deemed to have been served on March 23, 2017.

### Issue(s) to be Decided

Can the tenants cancel the landlord's 10 Day Notice? If not, is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the *Act*?

Can the tenants recover the filing fee from the landlord?

## Background and Evidence

The tenants explained that this tenancy began in July 2016. They said that rent was \$1,495.00 per month and a security deposit of \$1,495.00 continues to be held by the landlord.

The tenants stated that they and their lawyer, S.C. has made numerous attempts to contact the landlord to pay rent but have been unable to speak with him. On March 9, 2017 the landlord served them with a 10 Day Notice for unpaid rent in the amount of \$8,970.00. The tenants stated that on March 10, 2017 they attempted to pay this amount to the landlord but the landlord refused to accept it and instead informed them that they owed him \$13,500.00.

The tenants are also seeking an Order for the landlord to comply with the *Act* and to accept the rent.

## Analysis – Order of Possession

Section 46 of the *Act* states 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 only way that a tenant can cancel this notice is by:

Section 46(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

The tenants testified that they made sincere efforts to pay the landlord all rent due on March 10, 2017 the day after the issuance of the 10 Day Notice, but the landlord refused to accept it. I found the tenants to be credible witnesses and have no reason to dispute their testimony. The landlord did not appear at the hearing despite being served with the tenants' application for dispute resolution being served to him by way of Registered Mail.

The tenants are successful in canceling the landlord's 10 Day Notice issued on March 9, 2017.

As the tenants were successful in the application they may recover the \$100.00 filing fee from the landlord. Pursuant to section 72 of the *Act*, the tenants may withhold this amount from a future rent payment.

### Order to Comply

The tenants stated that they wished for the landlord to comply with the *Act* and to accept the outstanding rent of \$8,970.00 in place of the rent of \$13,500.00 that the landlord allegedly demanded from them.

Little evidence other than oral testimony was provided to the hearing evidencing that this demand was received by the tenants. Furthermore, no copy of the residential tenancy agreement was submitted as evidence, making it very difficult to determine whether the landlord had any recourse to any late fees associated with non-payment of rent.

In the absence of the landlord's participation at this hearing and with no written evidence provided, it is difficult to justify making an order for the landlord to comply with the *Act* when only oral testimony was heard. As such, I will decline to direct the landlord to comply with the *Act* under section 62 of the *Act*.

### Conclusion

The tenants were successful in canceling the landlord's application for an Order of Possession. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenants may withhold \$100.00 from a future rent payment pursuant to section 72 of the *Act*.

The tenants' application for an Order directing the landlord to comply with the *Act* is dismissed.

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: April 12, 2017

---

Residential Tenancy Branch