



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SHARLOCK ENT. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNR OPR

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. I find that the Notice to End a Residential Tenancy dated April 10, 2017 to be effective April 20, 2017 and the Application for Dispute Resolution dated April 11, 2017 were served personally. The tenant applies to cancel a Notice to End the Tenancy for unpaid rent pursuant to section 46 of the *Residential Tenancy Act* (the Act).

**Issues:** Is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. It is undisputed that the tenancy began on December 1, 2014, the current rent is \$850 and the tenant paid a security deposit of \$425.

The landlord served the Notice to End Tenancy pursuant to section 46. They crossed out the word “rent” in the box at the top of the Notice and substituted “monetary order” for \$404.50. The landlord was awarded this monetary order in a previous Decision on March 9, 2017 but the tenant failed to pay it after several notices from the landlord. The landlord then issued her the 10 Day Notice to End Tenancy. The landlord confirmed the tenant paid it on May 3, 2017.

### **Analysis:**

The Notice to End a Residential Tenancy is based on unpaid rent pursuant to section 46 of the Act. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. I find the tenant disputed the Notice in time within the five days permitted by section 46.

I find “rent” as defined in section 1 of the Act does not include an amount for damages. I find the award of \$404.50 was an award for damages as the tenant’s sons had damaged an elevator. Section 46 of the Act provides that the 10 Day Notice to End Tenancy may be served for unpaid **rent or utilities** (emphasis mine). I find the 10 Day Notice to End Tenancy was an improper notice served to the tenant as it did not pertain to any unpaid rent or utilities. I set aside and cancel the Notice. The tenancy continues.

The landlord had some complaints about the tenant. I advised her to consult section 47 of the Act if she believes she has cause to end the tenancy.

**Conclusion:**

I set aside and cancel the 10 Day Notice to End Tenancy dated April 10, 2017. The filing fee was waived so is not awarded.

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: May 18, 2017

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Residential Tenancy Branch