



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") pursuant to section 46; and
- recovery of the filing fees for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Both landlords were represented by the landlord, ED (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the landlords' 10 Day Notice, the tenants' application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlords' 10 Day Notice, the tenant's application and their respective evidence.

### 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 tenants entitled to recover the filing fee for this application from the landlords?

### Background and Evidence

The parties agreed on the following evidence. This periodic tenancy began in September, 2016. The rental unit is the basement suite of a detached home. The

landlords occupy the main floor of the building. The rent is \$550.00 payable on the first of the month. The tenants are also responsible for paying a portion of the utility bills. The bills are mailed to the landlords who calculate the tenants' portion and advise them of how much they must pay. The landlord testified that she waits for several months' worth of bills to accumulate before calculating and informing the tenants.

The parties testified that the landlords first informed the tenants of the amount of utility bills the tenants owed for January to March, 2017 by email on April 2, 2017. The parties subsequently negotiated the amount of utilities that the tenants would pay but no agreement was reached. The landlords provided a letter to the tenants on April 14, 2017 stating that the tenants need to pay \$286.85 for utilities pursuant to the tenancy agreement. On the same day, the landlords issued the 10 Day Notice stating that the tenants had failed to pay the amount of \$286.85 for utilities following written demand on March 30, 2017.

### Analysis

In accordance with subsection 46(4) of the *Act*, the tenants must either pay the overdue rent and utilities or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case, the landlords must show that there was an arrear of \$286.85 for utilities at the time the 10 Day Notice was issued.

I find that pursuant to section 46(6)(b) of the *Act*, the tenants had 30 days from being given a written demand for payment to pay the utility charges in full. Based on the evidence of the parties the tenants were given written notice of the utility charges on April 14, 2017 after some negotiation between the parties. I therefore find that the tenants were not obligated to pay the utilities until the 30 days provided by the *Act*, on May 14, 2017.

Therefore, I find that as the utilities were not yet due, the landlords' 10 Day Notice has no effect and I order that it is cancelled. This tenancy may continue until ended in accordance with the *Act*.

As the tenants were successful in their application, the tenants are entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$100.00

The landlords 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: May 18, 2017

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Residential Tenancy Branch