



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROERPTY SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

This hearing dealt with a tenant's application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* dated May 3, 2017. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I confirmed that the landlord withdrew the subject 10 Day Notice and the breach letter that was issued to the tenant on May 3, 2017. The parties were in dispute as to who should bear the cost of the filing fee.

### Issue(s) to be Decided

Which party should bear the cost of the filing fee paid for this application?

### Background and Evidence

It was undisputed that the tenant had provided post-dated cheques to the former building manager in early April 2017 for the months of May 2017 and June 2017. A new building manager started in mid-April 2017 and was unaware of the post-dated cheques that the tenant had provided. The manager erroneously issued a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and a breach letter to the tenant on May 3, 2017. The tenant approached the manager to inform him of the post-dated cheques and the manager acknowledged the error but would not provide the tenant with a written confirmation of the error or withdrawal of the Notice. The tenant was referred to the property manager's office. The tenant contacted the property manager's office, requesting a written withdrawal of the Notice. The parties began leaving messages for each other. On May 5, 2017 the property manager left a message on the tenant's answering service that the landlord would not enforce the 10 Day Notice. Without a written retraction the tenant proceeded to file this Application for Dispute Resolution on

May 8, 2017. On May 9, 2017 the property manager wrote a letter confirming the Notice and the breach letter were withdrawn. The tenant received the letter on May 11, 2017.

The tenant was of the position that a written eviction notice should have been withdrawn in writing and that filing the Application was appropriate to protect his interests. The landlord was of the position that orally assuring the tenant that the landlord would not enforce the Notice was sufficient; the tenant did not need to file the Application for Dispute Resolution and the landlord was unaware the tenant had filed when the landlord wrote the written withdrawal on May 9, 2017.

### Analysis

Section 72(1) of the Act provides me the authority to order one party to pay or repay the application fee to the other party. The application fee paid by the tenant was \$100.00.

A Notice to End Tenancy is a formal document that has serious consequences, including the conclusive presumption that the tenancy will end if a tenant does not dispute the Notice with the applicable time limit. Where a tenant is in receipt of a 10 Day Notice to End Tenancy for Unpaid Rent, section 46(5) provides that the tenant has only five days after receiving the 10 Day Notice to pay the rent or file an Application for Dispute Resolution to dispute the Notice. If the tenant does not, section 46(5) provides:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

A Notice to End Tenancy may be withdrawn by mutual consent. The landlord was of the position that oral confirmation of withdrawal was sufficient. However, I find the tenant's decision to file an Application for Dispute Resolution to dispute the 10 Day Notice was prudent and reasonable in the circumstances. Since the Notice to End Tenancy is a written document with potential for serious consequences for the tenant, I am of the view that the withdrawal should also be captured in written form to avoid the potential for a future dispute as to whether the Notice was actually withdrawn. I find also it reasonable to expect that written confirmation of withdrawal be provided before

the tenant's window of opportunity to dispute the Notice expires. Despite the property manager having knowledge of the error on May 5, 2019 she did not give the tenant the withdrawal letter before the tenant's time limit for disputing the 10 Day Notice expired and I find the property manager's delay is the reason for the filing of this application. While I appreciate errors and mistake occur from time to time, I find the cost of the error should be that of the party that made the error. In this case, the landlord made the error so the landlord should bear the cost of the filing fee. Therefore, I order the landlord to repay the tenant the filing fee he paid for this application.

To recover the filing fee from the landlord as ordered above, I authorize the tenant to deduct \$100.00 from a subsequent month's rent. Furthermore, upon receipt of the tenant's rent payment with the \$100.00 deduction the landlord shall consider that month's rent to be paid in full.

### Conclusion

The landlord has been ordered to repay the tenant the filing fee paid for this application. The tenant has been authorized to deduct \$100.00 from a subsequent month's rent to recover this award. Despite the \$100.00 deduction from a subsequent month's rent payment, the landlord must consider the tenant to have paid rent in full for that month.

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: June 15, 2017

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Residential Tenancy Branch