



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute codes**      CNC, O

### **Introduction**

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the “Act”) filed April 19, 2017 based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”). The tenants applied to cancel the 10 Day Notice and for other unspecified relief.

Only the landlord attended the hearing. He gave affirmed testimony and made submissions.

Service of the tenants’ application and notice of hearing was not at issue. The tenants did not attend at the hearing of their own application.

### **Issues**

Are the tenants entitled to an order cancelling the 10 Day Notice?

If not, is the landlord entitled to an order of possession?

### **Background and Evidence**

The landlord testified that the 10 Day Notice was posted on the tenants’ door on April 10, 2017. The tenants’ application indicates that it was received April 11, 2017. The tenants did not apply to dispute the 10 Day Notice until April 19, 2017.

The tenants’ application to dispute includes the following in the details section:

We have been directed to pay rents directly to [mortgage company] . . . for purposes of foreclosure proceedings. We believe that landlord is no longer in possession of the property and cannot enforced 10 day notice against us. We have paid rents as directed directly to CIBC. Until further

notice as directed by CIBC the owner of the property CIBC Mortgages, is our legal landlord.

Neither party submitted any evidence. The 10 Day Notice was not in evidence. The landlord was asked to fax the 10 Day Notice to the Residential Tenancy Branch no later than end of day on Tuesday, May 30, 2017 and did so. It is unsigned. "Copy" is written across the top. It claims rent in the amount of "all of it" that was due on "2016 and 2017."

The landlord testified that this tenancy began in the spring of 2015 with one of the named tenants, JD, another tenant, A, and a third tenant who left after a period of months. There is no written tenancy agreement and the landlord testified that he did not make any oral agreement with the other tenant, SD, who is one of the applicants in this dispute.

The landlord further testified that A paid \$450.00 per month and that JD paid \$550.00 based on the room that they rented. Tenant A gave notice for the end of March, and JD did not pay rent for March. The landlord emailed JD a 1 Month Notice to End Tenancy, believing that this was the correct notice for unpaid rent. JD did not respond or pay any money.

The landlord testified that on April 10 he posted the 10 Day Notice for outstanding March and April rent. At that point he did not know that the property was under foreclosure.

At some point SD contacted the landlord and told him about the foreclosure. The landlord testified that he has since made the required payments and that the property is no longer in foreclosure. The landlord did not provide any documentary evidence.

### **Analysis**

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after it is due by giving notice to end the tenant effective on a date no earlier than 10 days after the tenant receives the notice. Under subsection (4), the tenant has five days after receipt of the notice to pay the overdue rent or dispute the notice by making an application for dispute resolution, failing which the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

Here, the 10 Day Notice was received on April 11, and the tenants did not apply to dispute it until April 19, 2017. They are therefore not within the applicable time limit. The tenants have also failed to attend at the hearing. For both of these reasons I dismiss the tenants' application without leave to reapply.

Section 55 of the Act requires that I issue an order of possession in favour of the landlord where an application to dispute a notice to end tenancy is refused or a notice to end tenancy is upheld, provided that the notice complies with the Act. As the 10 Day Notice is unsigned it does not comply with the Act and I cannot therefore issue an order of possession.

### **Conclusion**

The tenants' application is dismissed without leave to reapply. No order of possession is granted under s. 55, as the notice does not comply with s. 52.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

Dated: June 5, 2017

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Residential Tenancy Branch