



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAN KEI ENTERPRISES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, FF; CNR

### Introduction

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

- an order of possession for unpaid rent or utilities, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

This hearing dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 2, 2017 ("10 Day Notice"), pursuant to section 46.

The landlords did not attend this hearing, which lasted approximately 11 minutes. The tenant and his legal advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that his advocate had permission to speak on his behalf at this hearing.

The tenant's advocate testified that the landlords were served with the tenant's application for dispute resolution and notice of hearing on September 5, 2017 and the tenant's written evidence package on November 10, 2017, both by way of registered mail. She provided a Canada Post receipt for the first package and a Canada Post tracking number verbally for the second package. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were deemed served with the tenant's application and notice of hearing on September 10, 2017, five days after the first registered mailing, and the tenant's written evidence package on November 15, 2017, five days after the second registered mailing.

The tenant testified that he received the landlords' 10 Day Notice on September 2, 2017, which was posted to his rental unit door. The effective move-out date on the notice is September 11, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 10 Day Notice on September 2, 2017.

#### Preliminary Issue – Dismissal of Landlord's Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the landlords, I order the landlords' entire application dismissed without leave to reapply.

#### Issue to be Decided

Should the landlords' 10 Day Notice be cancelled?

#### Analysis

In accordance with section 46(4)(b) of the *Act*, the tenant must file his application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on September 2, 2017 and filed his application to dispute it on September 5, 2017. Accordingly, I find that the tenant's application was filed within the five day time limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlords to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlords did not appear at this hearing. The landlords did not meet their onus of proof.

Therefore, as advised to the tenant during the hearing, the landlords' 10 Day Notice, dated September 2, 2017, is cancelled and of no force or effect. This tenancy will continue until it is ended in accordance with the *Act*.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I allow the tenant's application to cancel the landlords' 10 Day Notice. The landlords' 10 Day Notice, dated September 2, 2017, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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: November 27, 2017

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Residential Tenancy Branch