



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution (the Application) for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46 of the *Residential Tenancy Act* (the *Act*);

An agent of the landlord did not attend this hearing, although I waited until 11:12 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m.

The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The tenant testified that they personally served the Application and evidentiary package to an agent of the landlord on September 25, 2017. Based on the tenant's undisputed affirmed testimony, I find the landlord was duly served with the Application and evidentiary package.

The tenant acknowledged receipt of the 10 Day Notice dated September 23, 2017, which was personally served to her on this same date. In accordance with section 88 of the *Act*, I find the tenant was duly served with the 10 Day Notice

### Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

### Background and Evidence

The tenant gave written evidence that this tenancy began on August 01, 2016, with a monthly rent of \$900.00 payable on the first day of each month. The tenant testified that the landlord currently retains a security deposit in the amount of \$450.00.

The tenant entered into written evidence the signed 10 Day Notice to End Tenancy for Unpaid Rent, dated September 23, 2017, for \$520.00 in unpaid rent that was due on September 01, 2017, with a stated effective date of October 03, 2017.

### Analysis

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

**Commencement of the Hearing** - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Section 46 of the *Act* allows a landlord to issue a 10 Day Notice to a tenant if the landlord has grounds to do so. Section 46 (4) of the *Act* provides that upon receipt of a 10 Day Notice the tenant may, within five days, pay the overdue rent, in which case the notice has no effect, or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 10 Day Notice. As the tenant disputed this notice on September 25, 2017, and since I have found that the 10 Day Notice was served to the tenant on September 23, 2017, I find the tenant has applied to dispute the 10 Day Notice within the time frame provided by section 46 (4) of the *Act*.

In the absence of the landlord to present any evidence to substantiate that the tenant owed any rent, I find there is no evidence to establish the landlord had reason to issue a notice to end tenancy. For this reason the 10 Day Notice to End Tenancy For Unpaid Rent dated September 23, 2017, is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The tenant is successful in their Application.

The 10 Day Notice to End Tenancy for Unpaid Rent dated September 23, 2017, is cancelled and of no force or effect.

This tenancy continues until 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: December 18, 2017

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Residential Tenancy Branch