



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNR, FFT

### Introduction

This hearing was scheduled to consider the tenants' applications pursuant to the *Residential Tenancy Act* (the "Act") for:

- More time to file an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice" pursuant to section 66; and
- cancellation of the 10 Day Notice pursuant to section 46; and
- recovery of the filing fee from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, cross-examine one another and to call witnesses. The corporate landlord was represented by its agent RH (the "landlord"). The co-tenant GM (the "tenant") appeared on behalf of both named tenants and was assisted by an advocate.

As both parties were in attendance I confirmed service of documents. The parties testified that they were each in receipt of the respective materials. I find that the parties were served with all documents in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the tenants be granted more time to file an application to cancel the 10 Day Notice?

Should the 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The parties agreed on the following facts. The landlord issued the 10 Day Notice on November 8, 2017, which states that the tenancy is in arrears by \$1,400.00. The 10 Day Notice was posted on the rental unit door on November 8, 2017. The tenant was involved in an accident on November 16, 2017 and attended the hospital. The tenant attempted to pay the rental arrears by a money order on November 17, 2017 but found that the landlord's office was closed. The tenant gave the landlord the money order for the rental arrears on November 20, 2017. The landlord returned the money order to the tenant on that same date and informed the tenant of their intention to proceed with ending the tenancy.

The landlord testified that this tenancy began in January, 2003 and the current monthly rent is \$1,385.00 payable on the first of the month. The tenant is also responsible for paying \$15.00 for parking by the first of each month. A copy of the most recent Notice of Rent Increase dated June 19, 2017 was submitted into evidence showing the rent amount and a parking charge of \$60.00. The landlord testified that the current amount for rent and parking is \$1,400.00.

The landlord said that there have been multiple instances where the tenant has paid rent after the first. The landlord said that they did not accept payment from the tenant for November and December 2017 and January and February, 2018 as they believed that doing so may reinstate the tenancy even if they issued a receipt for "use and occupancy only".

The tenant testified that they intended to pay the arrears on November 16, 2017 when they were involved in a workplace accident. The tenant suffered injuries due to the accident and was hospitalized. The tenant said that he was heavily medicated and unable to make arrangements for paying the rent during his hospitalization. The tenant submitted into written evidence a note from his family physician stating that the tenant was in the emergency room on November 16, 2017 from 4:00pm to after midnight and was in a second hospital the following day until 5:00pm.

The tenant said that he attended at the landlord's office on November 17, 2017 with the intention of paying the rent arrears but the office was closed. The tenant testified that he attended at the landlord's office on the morning of the next business day, November 20, 2017 and provided them with the money order. The landlord subsequently returned the money order to the tenant that day.

The landlord's building manager testified that she saw in surveillance videos that the tenant returned to the rental building on the evening of November 16, 2017. However,

no copy of the video evidence was submitted into evidence and the tenant disputed this evidence.

### Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that “exceptional implies that the reason for failing to do something at the time required is very strong and compelling.” Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

Subsection 46(4) of the *Act* provides that the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the 10 Day Notice was posted on the rental unit door on November 8, 2017. Pursuant to section 90(c) of the *Act*, a document served by attaching a copy on the door is deemed to be received on the 3<sup>rd</sup> day after posting. Therefore, I find that the 10 Day Notice was deemed served on November 11, 2017. The tenant had until November 16, 2017, five days after deemed receipt of the 10 Day Notice to either make payment or dispute the Notice.

The tenant provided undisputed evidence that he was hospitalized on the 16<sup>th</sup> of November. The tenant testified that he was discharged on the evening of the 17<sup>th</sup> and attempted to make payment but the landlord was unavailable. The landlord’s building manager testified that the tenant was seen on the rental premises on the 16<sup>th</sup> but I find there is insufficient evidence to support her statement. The tenant provided the landlord with payment on November 20<sup>th</sup>, 2017, the first business day after being discharged from the hospital. The landlord returned the payment to the tenant on that same date.

I accept the undisputed evidence that the tenant was hospitalized on November 16, 2017. I accept the medical note submitted into evidence by the tenant in support of their submission that they were unavailable to make payment until the evening of November 17, 2017 when the landlord’s office was closed.

I note parenthetically, that I found the medical note to be somewhat difficult to make out and the name of the patient appeared illegible, but as neither party raised the issue, I accept it as evidence in support of the tenant’s statement that they were hospitalized.

I find that the tenant’s hospitalization is an exceptional circumstance that would allow an extension of a time limit. I accept that the tenant did not willfully fail to comply with the

time limit but had a bona fide intention to comply by making payment of the rental arrears on that date. I accept the tenant's submission that they took reasonable and appropriate steps to comply with the time limit by preparing a money order to be provided to the landlord on that date. I find that there is no evidence that the failure to make payment on November 16, 2017 was caused or contributed to by the tenant. I further accept the tenant's evidence that payment was made at the earliest opportunity on November 20, 2017 and when it was refused the tenant brought the present application on that date.

Under the circumstances, I find that there were exceptional circumstances as supported by the tenant's testimony and medical document submitted into evidence to allow for an extension of the time limit under the *Act*. I allow the tenant's application for more time to dispute 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. The parties gave testimony that the tenant provided the landlord with a money order in the full amount of \$1,400.00 listed on the 10 Day Notice as well as the amount of the NSF fee on November 20, 2017. The landlord said that the money order was returned to the tenant on that date.

I find that there were exceptional circumstances to extend a time limit established under the *Act* to pay the arrears or file an application to dispute the 10 Day Notice. Accordingly, I find that it was open to the tenant to make payment of the rental arrear on November 20, 2017, the first business day when the landlord's office was open. I find it reasonable that the tenant did not make payment by placing the money order in an after hour dropbox as they wanted confirmation of receipt.

I do not find the landlord's conduct in returning the money order or refusing any subsequent rent payment to be reasonable. If there were concerns with reinstating the tenancy, they could have issued a receipt indicating payment was received for "use and occupancy only". I further note that the landlord did not file an application to end this tenancy for unpaid rent for November or the subsequent months or for repeated late payment of rent during this tenancy.

I accept the tenant's evidence that they attempted to pay the rental arrears on November 20, 2017 and were refused. As I have found that there were exceptional circumstances allowing the tenant to pay the rental arrears on November 20, 2017, I find that the continued existence of the arrears on this account is a consequence of the

landlord's own conduct in refusing to accept payment. I allow the tenants' application and find that the 10 Day Notice of November 8, 2017 is of no force or effect.

I further note that as the landlord refused to accept the rent payment for December 2017, January and February, 2018 that while rent for those months should be paid forthwith by the tenant, the landlord is estopped from issuing a Notice to End Tenancy for Late Rent for those months or including those months in a calculation of Repeated Late Payment of Rent.

As the tenant's application was successful the tenant is entitled to recover the \$100.00 filing fee for this application. As this tenancy is continuing the tenant may withhold \$100.00 from a future rent payment in satisfaction of this award.

### Conclusion

The tenants' application is allowed. The 10 Day Notice is cancelled and of no further force or effect.

The tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment.

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: February 1, 2018

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Residential Tenancy Branch