



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 8860 Montcalm Street Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR FF

### Introduction

This hearing was convened as a result of two separate Application for Dispute Resolutions filed by the Tenant; both of his applications (each to cancel a different 10 Day Notice) were set to be heard at the same time. The participatory hearing was held on May 23, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice); and,
- to recover the filing fee for the cost of this application.

The Landlord's agent attended the hearing and provided testimony. The Tenant also attended the hearing and provided testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Tenant filed an application on March 6, 2018, to cancel a Notice issued on March 2, 2018. The Tenant also filed a second application on April 8, 2018, to cancel a second Notice issued on April 4, 2018. The Tenant was given two different application packages and Notice of Hearings. The Landlord acknowledged receiving both of these as well as the documentary evidence he submitted. The Tenant acknowledged receipt of the Landlord's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Should the 10 Day Notices be cancelled?
  - If not, Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

Both parties provided testimony during the hearing with regards two different 10 Day Notices (for Non-payment of rent). However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether or not the tenancy will continue or end. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that monthly rent was \$765.00 at the time the Notices were issued.

The Landlord stated that new ownership has taken over the building as of the end of February 2018. The Landlord stated that at that time, they provided notice to all building occupants that payment methods would be changing. The Landlord stated in the hearing that they were looking to prevent cash and cheque payments from being left in an on-site drop box due to safety concerns.

The Tenant stated that he would prefer to continue paying in the same way he has for the past several years (leaving cash/cheque with onsite manager or dropping it in the office inbox onsite.) The Tenant also stated he could pay by email money transfer but the Landlord indicated that their business bank account does not allow for this. The Landlord has listed several methods of acceptable payment including: money order, cheque, or post-dated cheque by mail or pre-authorized debit if electronic means are preferred.

The Tenant stated he does not want to have to mail cheques and would like to be able to pay in the manner he has all along. The Tenant stated he does not trust the Landlord and doesn't want to do pre-authorized debit.

The Landlord stated that on March 2, 2018, they served the Tenant with a Notice by posting it to his door. The Tenant acknowledged receipt of the Notice this day. The Notice indicated that as of March 2, 2018, \$765.00 in rent was still unpaid by the Tenant. The Tenant stated that he sent an email money transfer to the Landlord on March 1, 2018. The Landlord stated that they received the email money transfer and rent was paid in full on March 2, 2018, later on the same day the Notice was provided to the Tenant.

The Landlord stated that they told the Tenant late in March that an email money transfer would not be acceptable for April rent. The Tenant stated that he paid rent on April 1, 2018, by email money transfer because the Landlord did not indicate or choose one of

his preferred methods of payment. The Landlord stated that they issued a second Notice on April 4, 2018, by posting a copy to the Tenants door. The Tenant acknowledged getting the Notice on April 4, 2018. Subsequently, the Tenant stated that he cancelled his email money transfer and dropped a cheque in the office mailbox. The Landlord acknowledged getting the rent in full within 5 days of issuing the Notice (before April 9, 2018) but could not recall exactly what day.

### Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

I note that the Tenant acknowledged receiving the first Notice on March 2, 2018. As per section 46 of the *Act*, the Tenant, within 5 days of receiving the notice, may pay the overdue rent. If the Tenant does this, the notice has no effect.

In this case, the Tenant stated that he sent the email money transfer on March 1, 2018. The Landlord acknowledged receiving payment in full on March 2, 2018 (later on the same day the Notice was issued). The Landlord stated that because it was not a recognized method of payment, it was not immediately apparent that the Tenant had paid rent. In any event, the Landlord confirmed that rent was paid in full within 5 days of the Notice being issued. As such, I find the first Notice has no effect.

With respect to the second Notice, issued April 4, 2018, the Landlord stated that they told the Tenant late in March that an email money transfer would not be acceptable for April rent. The Tenant stated that he paid rent on April 1, 2018, by email money transfer because the Landlord did not indicate or choose one of his preferred methods of payment. The Landlord stated that they issued a second Notice on April 4, 2018, by posting a copy to the Tenants door. The Tenant acknowledged getting the Notice on April 4, 2018. The Tenant stated that he cancelled his email money transfer and dropped a cheque in the office mailbox.

The Landlord acknowledged getting the rent in full within 5 days of issuing the Notice (before April 9, 2018). I note the Tenant felt justified in delivering rent via email money transfer, despite warnings not to do so. However, I also note that the Tenant cancelled the email money transfer before it was deposited by the Landlord. Subsequently, the

Tenant paid April rent by cheque. Although it is unclear when the payment by cheque was actually made, I note that the Landlord was able to confirm that rent was paid, in full, within 5 days of the Tenant getting the Notice (issued on April 4, 2018). As such, I find the second Notice has no effect.

I find the Tenant's application is successful. Both 10 Day Notices issued by the Landlord are set aside. The tenancy will continue until ended in accordance with the *Act*.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I order that the Landlord repay \$100.00 for **one** of his application fees. I note that the Tenant chose to file two separate applications and pay two separate fees to have both of his applications to be heard at the same time. However, I also note that the Tenant could have filed and paid for one application and amended his application for free. I decline to award both filing fees to the Tenant, as it was the Tenant's choice to file the applications in the manner he did.

I authorize the Tenant to reduce a future rent payment by \$100.00 in order to compensate him for the filing fee.

As I have determined the 10 Day Notices are of no effect, I will not grant the landlord an order of possession.

### Conclusion

The Tenants' application is successful. The 10 Day Notices issued by the Landlord are cancelled. The tenancy will continue 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: May 23, 2018

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Residential Tenancy Branch