



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, CNR, FFT

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenants requesting a cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent. The Tenants also request an order for payment of the \$100.00 filing fee.

On July 4, 2018 the Tenants submitted an Amendment to an Application for Dispute Resolution seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property. The Tenant confirmed they served this on the Landlord on July 14<sup>th</sup> by personal delivery, which was witnessed.

Two of the three Tenants and the Landlord appeared for the scheduled hearing; the Landlord also had her daughter present as her advocate. The Landlord confirmed the proper spelling of her legal name and the Application was amended to reflect the change.

Neither party raised any issue on the service of the Notice of Hearing or evidence that was submitted by the parties. I did note that the Tenants submitted evidence only 6 days prior to the hearing date, but that evidence involved a Review Consideration and previous decision of the Residential Tenancy Branch and was only available at that late date; as both parties had access to these documents at the same time, I took this late evidence into consideration as there was no prejudice to the Respondent.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

### Issues to be Decided

Are the Tenants entitled to a cancellation of the 10-Day Notice to End Tenancy dated June 1, 2018, pursuant to section 46 of the Residential Tenancy Act ("Act")?

Are the Tenants entitled to a cancellation of the Two Month Notice to End Tenancy, pursuant to section 49 of the Act?

If not, is the Landlord entitled to an Order of Possession, pursuant to section 55 of the Act?

Are the Tenants entitled to payment of their \$100.00 filing fee, pursuant to section 72 of the Act?

### Background and Evidence

This tenancy began March 15, 2013 as a month-to-month tenancy. The rent was initially set at \$1,560.00, payable on the 15<sup>th</sup> day of each month. A security deposit of \$780.00 was paid to the Landlord. This monthly rental amount was increased to \$1,670.00.

The Landlord states she served a Two Month Notice to End Tenancy on May 6, 2018. No copy was submitted by either party into evidence, although the Landlord argued that the Tenants failed to dispute that notice within the time required.

On May 15, 2018, the rent went unpaid. The Landlord states she tried to work with the Tenants, but ultimately served a 10-Day Notice to End Tenancy for Unpaid Rent on June 1, 2018. She states that this was on an outdated form, and the Proof of Service notes it was left in the Tenants' mail slot. The Tenants filed this Application on June 4, 2018 to dispute the Notice and a hearing date was scheduled.

The Landlord states she attempted to negotiate payment from the Tenants on June 13, but that the parties could not come to an agreement. The Landlord then served a second 10-Day Notice to End Tenancy for Unpaid Rent on June 18, 2018. The Tenants did not pay the arrears or file a dispute to this notice, so the Landlord used the Direct

Request process to obtain an Order of Possession and monetary order. A decision was made July 3, 2018 by the Adjudicator to award the Landlord an Order of Possession, which she claims took effect two days after service, on July 7, 2018.

The Tenants state that they did not dispute the June 18<sup>th</sup> Notice to End Tenancy because it stated it was for the same amount of the arrears and they assumed it was replacing the original notice, so no dispute needed to be filed. They received the Orders and requested a Review Consideration by the Residential Tenancy Branch within the two-day time limit. It was their position that the Landlord obtained the Order of Possession through fraud and that the second notice was not legal as it was for the same arrears that were owing in the earlier Notice to End Tenancy.

The Review Consideration was completed July 17, 2018 by the Residential Tenancy Branch and the Arbitrator made the following observations:

*"The tenants submit that a previous 10-day notice ending tenancy for unpaid rent was issued on June 1, 2018. The tenants have disputed that Notice and submit that a hearing has been scheduled for July 27, 2018. A file number was provided. A check of the hearing date indicates that the hearing is scheduled for July 26, 2018 at 9:30 a.m.*

*The July 26, 2018 file shows that the tenants supplied a copy of only the first page of an older format 10-day Notice ending tenancy for unpaid rent. The Notice appears to have been issued by the landlord on June 1, 2018. The first page of that Notice does not provide the sum of rent owed or the due date of any rent owed. As this is an older form I can only assume that the rent and rent due date would be provided on the second page of the Notice ending tenancy.*

*The tenants submit that the Notice ending tenancy issued on June 16, 2018 was for the same period of time and exactly the same amount of money that was indicated on the June 1, 2018 Notice that has been disputed. The tenants write that the Notice ending tenancy that was utilized to obtain the July 3, 2018 decision and orders was based on fraud as the period of time and rent due is identical to the Notice that has been disputed.*

*The tenants did not supply any evidence that they disputed the Notice ending tenancy that was served to them on June 18, 2018. The tenants do not suggest that the June 16, 2018 Notice was not received. The landlord proceeded to request an order of possession and monetary order via the Direct Request Proceeding process and succeeded.*

*The tenants submit that the landlord has also issued a two month Notice to end tenancy. The tenants have disputed the two month Notice ending tenancy, which will also be heard on July 26, 2018.”*

The review upheld the decision to award the Landlord an Order of Possession and monetary award on the basis of the second 10-Day Notice to End Tenancy dated June 18, 2018. The Landlord has obtained a Writ and is arranging a date with the bailiff to evict the Tenants under the Order of Possession.

### Analysis

I find that the tenancy has ended effective July 7, 2018. The Application to cancel the June 1<sup>st</sup> Notice to End Tenancy and the Two Month Notice to End Tenancy is hereby dismissed as the issues are no longer relevant, given that the tenancy has ended by way of an issued Order of Possession.

The Tenants must comply with the Order of Possession that was awarded to the Landlord and must vacate the premises.

### Conclusion

The Tenants' Application is hereby dismissed, without leave to reapply.

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: July 31, 2018

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Residential Tenancy Branch