



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FFT

### Introduction

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 13, 2018 ("10 Day Notice"), pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 17 minutes. The landlords' agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord stated that she is the director of housing for the landlord company named in this application and that she had permission to speak on behalf of both landlords named in this application at this hearing (collectively "landlords").

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's application.

The landlord did not know the date or method of service of the landlords' written evidence package to the tenant. I notified the landlord that I could not consider the landlords' written evidence package at the hearing or in my decision, for this reason.

The landlord testified that the tenant was served with the landlords' 10 Day Notice on August 13, 2018. The notice indicates an effective move-out date of August 13, 2018.

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 10 Day Notice on August 16, 2018, three days after its posting. The tenant indicated that he received the notice on August 13, 2018, by way of posting to his rental unit door, when he applied to cancel the notice.

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

Rule 7.3 of the Residential Tenancy Branch ("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 evidence or submissions from the tenant, I order the tenant's application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlords are entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

#### Issues to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on March 1, 2016. Monthly rent in the current amount of \$615.00 is payable on the first day of each month. The tenant's rent is based on his income and the above rent amount has been in place since January 2018. A security deposit of \$187.50 was paid by the tenant and

the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlords issued the 10 Day Notice for unpaid rent of \$1,630.00 due on August 1, 2018. The landlord testified that the tenant failed to pay rent of \$400.00 for July 2018 and \$615.00 for each month from August to October 2018. She stated that the above amount of \$1,630.00 on the 10 Day Notice was incorrect as it should have read \$1,015.00 since the tenant only owed \$400.00 for July 2018 and \$615.00 for August 2018.

The landlords seek an order of possession based on the 10 Day Notice.

### Analysis

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant was deemed to have received the notice. The tenant was deemed to have received the 10 Day Notice on August 16, 2018, and filed his application to dispute it on August 17, 2018. Therefore, he was within the five day time limit to dispute the 10 Day Notice. However, the tenant did not appear at this hearing to present his submissions.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 46(1) of the *Act* states that the landlords may only end a tenancy if rent is unpaid on any day after the day it is due. This means that the landlords may only issue a 10 Day Notice for valid reasons.

I accept the landlord's undisputed evidence at this hearing, as the tenant did not attend. I find that the total amount indicated by the landlords on the 10 Day Notice of \$1,630.00 was incorrect. The landlord testified that the above amount was incorrect and it should have been \$1,015.00 which included \$400.00 for July 2018 rent and \$615.00 for August 2018 rent.

I find that by issuing a notice indicating an incorrect amount, the tenant was not provided with proper notice of the correct amount of rent due. Further, the tenant thought it was \$830.00 for outstanding rent in August 2018, as per his application. Therefore, I find that the tenant did not have proper notice of the correct amount of rent due in August 2018, such that he could pay the correct amount owed to the landlords.

For the above reasons and on a balance of probabilities, I find that the landlords issued an invalid 10 Day Notice to the tenant. The landlords' 10 Day Notice, dated August 13, 2018, is cancelled and of no force or effect.

I find that the landlords are not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlords' 10 Day Notice, dated August 13, 2018, is cancelled and of no force or effect.

The landlords are not entitled to an order of possession.

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: October 04, 2018

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Residential Tenancy Branch