



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and her submitted documentary evidence via Canada Post Registered Mail on August 15, 2018. Both parties also confirmed that the landlord served the tenant with his submitted documentary evidence via Canada Post Registered Mail. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served and are deemed served as per section 90 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 day notice?

Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Based upon the submitted copy of the signed tenancy agreement dated March 27, 2017 monthly rent was \$680.00 for the first 6 month period then later to \$750.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$340.00 was paid. The tenancy does not include any utilities.

Both parties confirmed that the landlord served the tenant with a 10 Day Notice dated August 7, 2018 by Canada Post Registered Mail on August 7, 2018. The 10 Day Notice states that the tenant failed to pay rent of \$750.00 that was due on August 1, 2018 and sets out an effective end of tenancy date of August 17, 2018.

The tenant claims that rent was initially paid via cash at the landlord's request at the beginning of the tenancy. The landlord later requested that rent be paid via e-transfer in June 2017 which the tenant complied with. On July 25, 2018 the landlord requested that rent be paid via cheque. The tenant claims that she does not have any cheques and had to order them through the bank with a wait time of approximately one month. A \$750.00 money order was bought at a cost of \$8.50 and mailed to the landlord on August 7, 2018. The tenant stated that on August 8, 2018 the tenant received the 10 Day Notice via Canada Post Registered Mail.

The landlord contradicted this stating that in June 2018 the landlord's internet service "went down" and a letter dated July 25, 2018 was served to the tenant suggesting that rent be paid via cheque and mailed to the landlord by the first of every month which was rejected by the tenant. The tenant then suggested that rent be paid via pre authorized debit plan which was rejected by the landlord in a letter dated July 29, 2018.

The landlord had provided a 25 page response to the tenant's application and on point #5 it states in part,

...on August 7, 2018 10 Days Eviction Notice was served by registered mail by the landlord to Mrs. M.S. for not paying rent for month August 2018. Rent for August was not received by the landlord until August 9, 2018 by money order in the mail.

The landlord repeatedly argued that the 5 day period in which to pay the owed rent was to start from the 1<sup>st</sup> day of the month as per the landlord's tenancy agreement. The landlord also repeatedly argued that he has many other "personal" issues with the tenant due to the landlord's report that the tenant had insulted him.

### Analysis

Section 46 of the Act states,

A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by **giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.**

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

**(4) Within 5 days after receiving a notice under this section, the tenant may**

**(a) pay the overdue rent, in which case the notice has no effect, or**

**(b) dispute the notice by making an application for dispute resolution.**

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case I accept the undisputed affirmed evidence of both parties and find that the landlord did serve the tenant with the 10 Day Notice dated August 7, 2018 via Canada Post Registered Mail on August 7, 2018. The tenant confirmed service of the 10 Day Notice on August 8, 2018. The landlord confirmed that he received a money order payment of \$750.00 from the tenant on August 9, 2018. As such, I find that the tenant paid rent within 1 day of receiving the 10 Day Notice dated August 7, 2018 on August 9, 2018. The 10 Day Notice dated August 7, 2018 is cancelled. The tenancy shall continue.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenant to withhold one-time \$100.00 from the next monthly rent due as satisfaction of this claim.

Conclusion

The tenant's application is granted.

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: September 24, 2018

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Residential Tenancy Branch