



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, ERP, RP, OLC

### 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;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to the landlord to make emergency repairs for health or safety reasons pursuant to section 33; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The landlord, the landlord's agent and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (Application) and evidence were personally served. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application and evidence.

The landlord confirmed that they did not provide any evidence to the tenant or the Residential Tenancy Branch.

The tenant acknowledged receipt of the 10 Day Notice, which was personally served to her on August 08, 2018. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice.

Issues(s) to be Decided

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

Is the tenant entitled to an order for the landlord to make repairs and emergency repairs to the rental unit?

Is the tenant entitled to an order for the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this tenancy began on August 01, 2017, with a monthly rent of \$1,600.00, due on the first day of each month. The landlord further testified that they currently retain a security deposit in the amount of \$800.00.

The tenant provided a copy of the signed 10 Day Notice, dated August 03, 2018, with an effective date of August 13, 2018, identifying \$800.00 in outstanding rent owing for this tenancy. The tenant also provided a copy of a receipt in the amount of \$800.00 dated August 22, 2018, was also provided by the tenant.

The landlord confirmed that the balance of the full monthly rent was paid for August 2018, and that the landlord did not indicate to the tenant that they were still seeking to end the tenancy at the time they issued the receipt. The landlord stated that another 10 Day Notice for September 2018 was issued to the tenant for unpaid rent owing for September 2018.

The tenant questioned why they are receiving 10 Day Notices from the landlord when they are paying the full rent every month.

Analysis

Section 46 of the *Act* allows a landlord to issue a 10 Day Notice to a tenant if the landlord has grounds to do so. Section 46 (4) of the *Act* provides that upon receipt of a 10 Day Notice the tenant may, within five days, pay the overdue rent, in which case the notice has no effect, or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 10 Day Notice. As the tenant disputed this notice on August 10, 2018, and since I have found that the 10 Day Notice was served to the tenant on August 08, 2018, I find that the tenant has applied to dispute the 10 Day Notice within the time frame provided by section 46 (4) of the *Act*.

Having reviewed the documentary evidence and affirmed testimony, I find that the tenant paid the balance of the monthly rent outside of the five days allowed by the Act; however, I find that the landlord accepted the balance of the rent and did not indicate verbally or in writing that it was only accepted for the use and occupancy of the rental unit. I further find that the landlord confirmed that another 10 Day Notice was issued for September 2018 which confirms that the tenancy was reinstated when the landlord accepted the balance of the August 2018 rent

For the above reasons, as I have found that the landlord reinstated the tenancy when the tenant paid the rent on August 22, 2018, the 10 Day Notice dated August 03, 2018, is set aside and of no force or effect.

I find that the tenant has failed to provide any evidence showing that they have contacted the landlord for any emergency repairs or that any repairs are required. For this reason, I dismiss the Application seeking an order for repairs and/ or emergency repairs to be made, with leave to reapply.

I further find that the tenant has failed to provide any evidence that the landlord is not complying with the Act, Regulations or tenancy agreement and for this reason the Application to have the landlord comply with the Act Regulations or tenancy agreement is dismissed, with leave to reapply.

### Conclusion

The 10 Day Notice dated August 03, 2018, is cancelled and of no force or effect. This 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: September 27, 2018

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Residential Tenancy Branch