



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** CNR FFL OPRM-DR

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. KN appeared, and translated for the landlords in this hearing.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants were duly served with the Applications and evidence.

The tenants confirmed in the hearing that they were served with the two 10 Day Notices. The landlords had served the tenants on July 7, 2018 with a 10 Day Notice,

and re-served the tenants a new 10 Day Notice on July 9, 2018. In accordance with section 88 of the *Act*, I find that the tenants were duly served with both 10 Day Notices.

### **Preliminary Matter: Tenants' Application for Summons**

In my Interim Decision dated August 31, 2018, I had deferred my decision in regards to the tenants' application for a summons.

The matter was addressed in the hearing, and the tenants made further submissions regarding their application for a summons. As stated in my Interim Decision, as per Rule 5.3, a summons is only issued in cases where the evidence is necessary, appropriate and relevant. The summons request must meet all three criteria.

The tenants wanted to emphasize that they had difficulty making rent payments as the home was purchased by new landlords, and they were unclear as to how to make their rent payments. It was undisputed by the landlords that they did not accept the attempted rent payment taped to their door by the tenants. I find that the document requested by the tenants would not provide further clarity on the issue of unpaid rent. After considering the tenant's previous written submissions, in addition to the submissions made in the hearing, I was not satisfied that the document requested is relevant or necessary for the application, and the tenants' application was a summons was dismissed.

### **Issue(s) to be Decided**

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

Are the landlords entitled to a Monetary Order for Unpaid Rent?

Are the landlords entitled to recover the cost of the filing fee for this application?

### **Background and Evidence**

This month-to-month tenancy began on October 1, 2016, with monthly rent set at \$1,500.00, payable on the first of each month. The home was purchased by the new landlords, who took possession on July 5, 2018. The tenants continue to reside in the rental unit.

The landlords issued a 10 Day Notice on July 7, 2018 to the tenants, indicating an effective move-out date of July 17, 2018 for failing to pay rent for July 2018. The landlords re-served the tenants a new 10 Day Notice on July 9, 2018, with an effective date of July 19, 2018, which they testified was because the tenants believed the first 10 Day Notice to be invalid.

The tenants testified that they had attempted to make payment to the landlords after receiving the 10 Day Notices by taping their July Rent Cheque to the landlords' door on July 9, 2018. The landlords confirmed that the tenants did tape a cheque to their door which they discovered on July 13, 2018, and which they did not remove or accept. The landlords testified that there were issues between both parties, and they believed that the acceptance of the rent payment would imply their acceptance of the tenants' requests.

The tenants indicated in the hearing that they had attempted to make rent payments to the landlords, which is continuously refused. The landlords testified that no payments have been made by the tenants since they took possession of the home.

### **Analysis**

The tenants received two 10 day Notices to End Tenancy, on July 7, 2018 and July 9, 2018. The tenants filed their application for dispute resolution on July 11, 2018. I find that the tenants filed their application pursuant to section 46(4) of the *Act*, within five days of receiving both 10 Day Notices.

Section 26 of the *Act* requires that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." I find that it was undisputed by both parties that the tenants had attempted to make payment to the landlords by taping a cheque on the landlords' door, but the landlords had refused payment as they were concerned about other issues arising from this tenancy, and whether the acceptance of the rent payment would imply the landlords' acceptance of the tenants' requests.

I find that the tenants had attempted to comply with sections 26 and 46 of the *Act* by attempting to pay rent to the landlords, but the landlords had refused to accept the payment. Based on these circumstances I am allowing the tenants' application to cancel

the 10 Day Notices dated July 7, 2018 and July 9, 2018, and this tenancy is to continue until ended in accordance with the Act.

It was undisputed by both parties that the tenants owe rent in the amount of \$1,500.00 for July through to September 2018. Accordingly, I allow the landlords' application for a monetary order in the amount of \$4,500.00 for unpaid rent.

I find that the landlords were partially successful in their claim, and are entitled to recover half of the filing fee from the tenants.

### **Conclusion**

I allow the tenants' application to cancel the 10 Day Notices issued by the landlords. The 10 Day Notices dated July 7, 2018 and July 9, 2018 are of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a \$4,550.00 Monetary Order in favour of the landlords, which allows the landlords to recover the unpaid rent and half of the filing fee for this application.

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court

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 5, 2018

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Residential Tenancy Branch