



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      CNR OLC FF

### Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent and/or utilities, pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence on file.

The tenant's application to cancel the 10 Day Notice was filed within the time period permitted under the Act. The tenant's application seeking an order that the landlord comply with the Act is related to the issuance of the 10 Day Notice for unpaid utilities so I make no orders in that respect.

### Issues

Should the landlord's 10 Day Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy began on January 1, 2012 and the current monthly rent is \$762.00 payable on the 1<sup>st</sup> day of each month. The tenant is also responsible for his own utilities and the septic. The rental unit is a farm property. There are three separate tenancies on this property. The tenant is in a cabin on the North side of the property. The other two tenancies are in the main house and a cottage on the property. Each tenant has their own septic tank.

The 10 Day Notice to End Tenancy subject to this dispute is dated October 22, 2018. The landlord also issued a previous 10 Day Notice on October 11, 2018 but it was an old form. The landlord also issued another 10 Day Notice on October 24, 2018 but it is similar to the October 22, 2018 Notice.

The landlord testified that the tenant's septic tank was cleaned out on May 17, 2017 and since that time he has made many verbal attempts to get the tenant to pay the outstanding invoice and also provided the invoice to the tenant many times. The landlord did not provide the tenant with a written demand for the unpaid utilities until October 11, 2018. The landlord argues the invoice provided to the tenant only includes the costs associated with the tenant's tank as the service technician did not have time to pump the other tanks on the same day. The landlord argues the technician came back the following day to pump the other tanks.

The tenant testified that he has received various invoices for different amounts and he still does not agree with the invoice amount provided with the October 11, 2018 demand letter. The tenant argues that the invoice provided by the landlord includes a portion of the cost of pumping the other septic tanks on the property.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 10 Day Notice to End Tenancy.

Section 46(6) of the Act deals with a landlord's notice for non-payment of utilities and stipulates as follows:

46(6) If

*(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and*

*(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,*

*the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.*

I find the landlord is treating the unpaid utilities as unpaid rent and issued a 10 Day Notice based upon the unpaid utilities amount; however, I find the landlord has failed to first meet the requirement of first providing the tenant with a written demand letter requiring the payment which would include a copy of the invoice or bill clearly outlining the amount the tenant is responsible for. The tenant was not provided a written demand letter until October 11, 2018 so the landlord must wait at least 30 days from this date before issuing a 10 Day Notice.

I also caution the landlord that the invoice or bill provided to the tenant should clearly outline the amount the tenant is responsible for under the agreement. Although, the copies of the invoices submitted into evidence by the landlord are very faint making them difficult to read, it does appear that invoice #1361, dated May 17, 2017, provided to the tenant does include a notation that the invoice included pumping of the house tank as there was insufficient room on the service truck the day before. Invoice #1360 is dated May 16, 2017 which appears to support the tenant's argument that his tank was pumped the day after and includes leftover from the other tanks on the property. The invoice dates do not appear to support the landlord's argument that the other tanks on the property were pumped the day after the tenant's tank.

As the landlord was not permitted to treat the unpaid utilities as unpaid rent, until at least 30 days after the written demand letter, the 10 Day Notice(s) dated October 11, 2018, October 22, 2018 and October 24, 2018 are all hereby cancelled and of no force or effect.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice(s) to End Tenancy, dated October 11, 2018, October 22, 2018 and October 24, 2018 which are all hereby cancelled and of no force or effect. 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: November 23, 2018

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Residential Tenancy Branch