



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

On October 16, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing; however, the Landlord did not make an appearance. The Tenant provided a solemn affirmation.

The Tenant advised that she served the Landlord the Notice of Hearing package by hand, with Tenant B.C. as her witness, within a week of receiving the package from the Residential Tenancy Branch. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served this package and that the hearing would continue.

The Tenant was given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a Notice to end tenancy that complies with the *Act*.

### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Tenant stated that the tenancy started approximately in June 2015 and that current rent was established at \$900.00 per month, due on the first of each month. A security deposit of \$450.00 was paid.

The Tenant stated that she is on disability, that Tenant B.C. is on welfare, and that their rent is paid directly to the Landlord through the Ministry. The Tenant stated that she was served the Notice in person on October 13, 2018 but she was served only the first page of the Notice. The Notice indicated that \$518.00 was outstanding on October 1, 2018 and it noted that the effective end date of the Notice was October 24, 2018.

The Tenant stated that she is unclear why the Notice indicated that \$518.00 was outstanding; however, she advised that the Ministry contacted the Landlord and it was determined that the rent had been paid in full.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to*

*have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

The undisputed evidence before me is that the Tenant received the Notice on October 13, 2018. As the fifth day fell on October 18, 2018, the Tenant must have paid the rent in full or made this Application by this day at the latest. The undisputed evidence is that the Tenant made her Application on October 16, 2018 and she confirmed as well that the rent was paid in full by the Ministry to cancel the Notice.

Moreover, the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. As the Landlord has not appeared at the hearing, I am not satisfied that the Landlord has properly substantiated the grounds for ending the tenancy.

Furthermore, I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. Section 52(3) states that in order to be effective, the Notice must be in the approved form and the approved form for a 10 Day Notice to End Tenancy for Unpaid Rent is two pages. I find it important to note that page one of the Notice states that both pages must be given to the Tenant.

The second page of the Notice outlines important information to the Tenant, such as the time provided in which to dispute the Notice or pay the rent owing. However, the Tenant would not have been aware of this without the information on the second page of the Notice. As the Landlord only served the Tenant with one page of the Notice, I am not satisfied that the full 10 Day Notice to End Tenancy for Unpaid Rent was served.

Based on the totality of the evidence before me, I am not satisfied that the Tenant was in arrears or that this is a valid Notice that complies with Section 52 of the *Act*. Therefore, I find that the 10 Day Notice to End Tenancy for Unpaid Rent, dated October 13, 2018, is of no force and effect.

### Conclusion

Based on the above, I hereby order that the 10 Day Notice to End Tenancy for Unpaid rent, dated October 13, 2018 to be cancelled and of no force or effect. This tenancy continues 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: November 27, 2018

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Residential Tenancy Branch