



# Dispute Resolution Services

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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, 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. The landlord did not attend this hearing, although I waited until 9:48 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant testified that on November 29, 2018, he personally served the landlord with a copy of the Application for Dispute Resolution and Notice of Hearing. The tenant testified the hearing package was served to the receptionist at the office of the property management building.

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

### Issues

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

### Background and Evidence

The 10 Day Notice to End Tenancy subject to this dispute is dated November 20, 2018 and the tenant states that it was received in the mail on November 22, 2018. The tenant's application to cancel the 10 Day Notice was filed on November 27, 2018 within the time period permitted under the Act.

### 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.

The landlord failed to participate in the hearing and failed to provide sufficient evidence that the Notice was issued on valid grounds. Accordingly, the 10 Day Notice to End Tenancy dated November 20, 2018, is hereby cancelled and of no force or effect.

In the hearing, the tenant waived his application for recovery of the filing fee from the landlord.

### Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice to End Tenancy, dated November 20, 2018, which is 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: January 10, 2019

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Residential Tenancy Branch