



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR OLC FFT

### Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice), pursuant to section 46 of the *Act*,
- an Order for the landlord to comply with the *Act*, regulation, and/or tenancy agreement pursuant to section 62 of the *Act*, and
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agents ZZ and DG attended on behalf of the corporate landlord and are herein referred to as "the landlord".

As both parties were present, service of documents was confirmed. The tenant testified the he served the landlord with his application for dispute resolution and the notice of this hearing by Canada Post registered mail, which was confirmed by the landlord. Therefore, based on the testimonies of the parties, I find the landlord was served in accordance with section 89 of the *Act*.

### Issue(s) to be Decided

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

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Is the tenant entitled to recover the cost of the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This tenancy began as a one-year fixed term tenancy on July 1, 2016. At the end of the fixed term, the tenancy continued on a month-to-month basis.
- Current monthly rent of \$1380.45 is payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$640.00, which continues to be held by the landlord.

The parties confirmed that they had both attended a prior arbitration hearing on September 4, 2018 resulting in a decision dated September 25, 2018 (file number noted on the cover sheet of this decision) in which the tenant was granted a monetary award against the landlord and provided direction in the decision to make a one-time deduction from his rent for the amount of the award.

The tenant testified that he withheld the monetary award of \$445.11 from his November 2018 rent.

The landlord confirmed that he believed the tenant was required to serve the landlord with a monetary order before making the rent deduction. Since the tenant failed to do so, the landlord issued a 10 Day Notice on November 16, 2018 for the amount of rent unpaid by the tenant. I note that the landlord erroneously stated the amount of unpaid rent to be \$455.11 when in fact the correct amount of the unpaid rent and the prior monetary award was \$445.11.

The tenant confirmed receiving the 10 Day Notice on November 16, 2018 and filed an application for dispute resolution on November 20, 2018 to dispute the 10 Day Notice. The tenant confirmed that he believed that he was entitled to withhold the amount of the monetary award from rent on one occasion per the prior arbitration decision direction.

The tenant acknowledged that he did not explain to the landlord at the time of his November 2018 rent payment the reason for the deduction from his rent. I advised the tenant that it is recommended by the Residential Tenancy Branch that a tenant explain in writing to the landlord prior to withholding an amount from rent in satisfaction of an arbitration order. The tenant acknowledged that he had failed to do so but was now aware to provide that clarity for future reference.

### Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. If a tenant fails to pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing proper written notice to end tenancy using a 10 Day Notice to End Tenancy.

A tenant who receives a 10 Day Notice to End Tenancy under section 46 has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In this case, I find that the tenant received the 10 Day Notice on November 16, 2018 and filed his application to dispute the notice on November 20, 2018. Accordingly, the tenant complied with the five-day time limit provided by section 46 of the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

In this matter, there was no dispute that the parties had previously attended an arbitration hearing in which the tenant was awarded monetary compensation against the landlord. The landlord confirmed he was in receipt of the prior arbitration decision, however, he interpreted the decision to mean that the tenant was required to serve him with a monetary order for the amount of the monetary award, prior to making the deduction from his rent.

I have reviewed the prior arbitration decision and I note under the "Analysis" section on page 6, it states:

*The tenant is therefore granted a monetary award in the amount of \$445.11, being \$345.11 rent reduction and \$100.00 filing fee reimbursement.*

*The tenant may make a one-time deduction in rent in the amount of \$445.11.*

I further note that this is confirmed in the "Conclusion" section also on page 6, which states:

*The tenant is granted a monetary order in the amount of \$445.11 and may make a one-time deduction in rent pursuant to section 72.*

I find that there was no requirement for the arbitrator in the prior hearing to issue a monetary order, as section 72(2) of the *Act* sets out that:

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), **the amount may be deducted**

- (a) **in the case of payment from a landlord to a tenant, from any rent due to the landlord**, and
- (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

**[My emphasis added]**

Section 46(3) of the *Act* states that:

- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this *Act* to deduct from rent.

I find that the amount of rent that the tenant failed to pay for the month of November 2018 was the amount of \$445.11, which corresponds to the amount of rent the tenant was permitted to deduct from his rent on one occasion per the prior arbitration decision dated September 25, 2018.

Based on the testimony and evidence before me, on a balance of probabilities, I find that the amount of rent that was unpaid by the tenant was the amount the tenant was permitted to deduct from his rent in accordance with an arbitration decision rendered under the *Act*.

Therefore, the landlord's 10 Day Notice is cancelled and of no force or effect. As the tenant was successful in his application to dispute the 10 Day Notice, I find that the tenant is entitled to recover the cost of the \$100.00 filing fee paid for the application.

The parties agreed during the hearing that the tenant would deduct the \$100.00 filing fee from his rent payment for February 2019.

In summary, the tenancy continues until ended in accordance with the *Act*.

### Conclusion

The tenant was successful in his application to dispute the 10 Day Notice dated November 16, 2018, therefore the notice is cancelled and of no force or effect, and the tenancy continues, until ended in accordance with the *Act*.

The tenant is entitled to recover the \$100.00 filing fee he paid for the application through a one-time deduction from his monthly rent. The parties agreed that the tenant would deduct the \$100.00 from his February 2019 rent.

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 07, 2019

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Residential Tenancy Branch