



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, ERP, LRE, OLC, PSF

### Introduction

The tenants apply to cancel a ten day Notice to End Tenancy for unpaid rent dated December 2, 2018. They also seek a variety of relief relating to the provision of heat and hot water to the rental unit and relating to the landlord's entry of the unit.

It was noted at hearing that this application has been given an expedited hearing date due to the request to cancel a Notice to End Tenancy. The remaining portions of the tenants' claim are "unrelated" to that primary claim and in accordance with Rule 2.3 of Rules of Procedure and should not have been joined with the primary application. Additionally, it appears that the tenants have pursued at least the repair claims in an earlier proceeding. For those reasons I dismiss all but the tenants' challenge to the ten day Notice and grant them leave to re-apply.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Is the ten day Notice a valid Notice resulting in the ending of this tenancy?

### Background and Evidence

There is no dispute but that the December rent of \$900.00 was not paid.

The tenant Mr. J.D. testifies that since the start of the tenancy rent has been paid by e-transfer to the landlord however, due to the tenants' banking difficulties at the start of December, Mr. J.D. drove to the landlord's house and attempted to pay the rent in cash.

Mr. J.D. says that the tender of rent was rejected by the landlord who vulgarly told him to get off his property.

The landlord says, and it is not disputed, that there was an altercation between the landlord and the tenants involving the police only a few days before. The tenants say the landlord was following them. The landlord says the tenants were following him. Either way, the police intervened and directed that the parties keep the peace and have no contact with each other.

### Analysis

Section 26 of the *Residential Tenancy Act* (the "*Act*") states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.

Common law requires a debtor to seek out and pay his creditor. In these circumstances the tenants are the debtors, the landlord is the creditor.

In the face of the police order, the tenants were wrong to attempt to pay the rent by going to the landlord's house. They could easily have texted the landlord about an appropriate method of payment. They could have sent an agent. They could have contacted the landlord's property manager.

In any event, the tenants had full opportunity to pay the rent during the five days following receipt of the Notice. Again, they could have arranged payment by various methods that would have avoided the possibility of confrontation. Such payment would have automatically cancelled the Notice and not jeopardized this tenancy.

I find that the ten day Notice is a valid Notice and resulted in this tenancy ending December 13, 2018. In accordance with s. 55(1) of the *Act*, the landlord will have an order of possession.

### Conclusion

The tenants' application to cancel the ten day Notice to End Tenancy dated December 2, 2018 is dismissed. The landlord will have an immediate order of possession.

During this hearing it became apparent that the tenants have gone for an extended period of time without heat or hot water. The landlord has been directed by a Residential Tenancy Arbitrator to attend to repairs within 30 days. It appears he waited until the very last of that period to attempt to attend to these vital repairs. It is not clear that the tenants' previous applications made a claim for compensation in regard to the loss of those facilities but this decision has no effect on their right to do so.

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 08, 2019

---

Residential Tenancy Branch