



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH POOL X LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR FFT OLC

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46;
- an order to the landlord to comply with the Act, regulation and/or the tenancy agreement pursuant to section 62 of the Act; and
- an order for reimbursement of the filing fee.

The tenant attended the hearing but no one appeared on behalf of the landlord. I kept the teleconference line open from the time the hearing was scheduled, plus an additional ten minutes, to allow the landlord the opportunity to call. The teleconference system indicated that only the tenant and I had called into the hearing. I confirmed the correct call in number and participant code for the tenant had been provided.

The tenant testified that she served the landlord with the notice of dispute resolution package on December 21, 2018 by registered mail. The tenant confirmed delivery by providing a copy of the Canada Post tracking slip. I find that the landlord was served with the notice of dispute resolution package in accordance with section 89 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46?

Is the tenant entitled to an order for the landlord to comply with the Act, regulation and/or the tenancy agreement pursuant to section 62 of the Act?

Is the tenant entitled to an order for reimbursement of the filing fee?

### Background and Evidence

The tenant testified that his tenancy started in March 2000 and he currently pays \$1,574.00 per month in rent. The tenant testified that the rental unit included one parking spot and the tenant requested a second parking spot in 2007. The tenant testified that a separate contract was entered into between the tenant and the landlord regarding the second parking spot.

The tenant testified that he notified the landlord that he wanted to cancel the second parking spot in June 2018. However, the tenant testified that the landlord kept charging the tenant \$60.00 per month for the second parking spot anyway.

The tenant testified that he received the Ten-Day Notice by mail in December 2018. The Ten-Day Notice was dated December 10, 2018 and it claimed unpaid rent of \$360.00 as of December 1, 2018. The tenant provided a copy of the Ten-Day Notice.

The tenant testified that his rent payments were current when the Ten-Day Notice was issued. The tenant testified that the \$360.00 claimed on the Ten-Day Notice actually related to car parking fees of \$60.00 per month, from June 2018 to December 2018.

The tenant testified that he immediately contacted the landlord and asked them about the Ten-Day Notice. The tenant testifies that the landlord told him that the Ten-Day Notice should not have been sent and that it was delivered inadvertently.

### Analysis

Section 46 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant has failed to pay rent. The onus is on the landlord to establish the cause upon which the Ten-Day Notice is based.

Rule 6.6 of the Rules of Procedure states in part as follows:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As the landlord has failed to attend this hearing and provide evidence to establish that the tenant owes the landlord any unpaid rent consistent with the Ten-Day Notice issued on December 10, 2018, I order that the Ten-Day Notice is cancelled and of no effect. The tenancy shall continue until it is ended pursuant to the *Act*.

The tenant also requested an order that the landlord comply with the *Act* by no longer billing him for the second parking stall. Section 6 of the *Act* enables parties to file applications for dispute resolution to determine their rights, obligations and prohibitions under the *Act*. However, Section 2(1) limits the scope of the *Act* to tenancy agreements, rental units and other residential property. Accordingly, I only have the jurisdiction to render decisions in dispute resolution matters relating to tenancy agreements, rental units and other residential property.

In this matter, I find that the parking fee dispute is not related to a tenancy agreement. Rather, it is a separate contract between the tenant and the landlord outside of the tenancy agreement. As such, the parking contract is not within the scope of Section 2(1) of the *Act*. Accordingly, I find that I do not have jurisdiction under the act to render any orders against the landlord regarding the parking fees.

For the forgoing reasons, I deny the tenant's request for an order to the landlord to comply with the *Act*, regulation and/or the tenancy agreement pursuant to section 62 of the *Act*.

As the tenant was successful in the cancellation of the Ten-Day Notice, I award the tenant recovery of the filing fees for this application from the landlord pursuant to section 72. The tenant may offset the reimbursement of this filing fee by deducting the sum of \$100.00 from one future rent payment.

### Conclusion

I grant the tenant's application to cancel the Ten-Day Notice. The Ten-Day Notice is cancelled and of no effect. The tenancy shall continue until it is ended pursuant to the *Act*.

I deny the tenant's request for an order to the landlord to comply with the *Act*, regulation and/or the tenancy agreement pursuant to section 62 of the *Act*.

I award the tenant recovery of the filing fees for this application from the landlord pursuant to section 72. The tenant may offset the reimbursement of this filing fee by deducting the sum of \$100.00 from one future rent payment.

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: February 08, 2019

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Residential Tenancy Branch