



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, LRE, OLC, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), to suspend or restrict the Landlord’s right to enter, for an order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* and/or tenancy agreement, and for the recovery of the filing fee paid for this application.

The Landlord attended the teleconference hearing while no one attended for the Tenants during the approximately 13-minutes that the phone line remained open. The Landlord was affirmed to be truthful in his testimony and confirmed receipt of the Notice of Dispute Resolution Proceeding package. The Landlord did not submit any evidence prior to the hearing.

### Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord’s right to enter the rental unit be suspended or restricted?

Should the Landlord be ordered to comply with the *Act*, *Regulation* and/or tenancy agreement?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Landlord testified that he rents out the bedrooms in his home during the winter season while he lives in the basement unit of the home. The Landlord stated that he owns a lodge and during the winter uses his home as an extension of the lodge to provide accommodation for a six-month period. He stated that the staff from the lodge provide services to the people renting out the bedrooms, such as cleaning services. The Landlord stated his belief that the *Act* does not apply to this situation as he uses his home as part of the lodge for a limited period each year.

There was no 10 Day Notice submitted into evidence and instead there was a 'Notice to Vacate Premises' letter dated December 18, 2018. The Landlord confirmed that this was the letter provided to the Tenants and that no 10 Day Notice was issued.

### Analysis

The Landlord stated his belief that the *Act* does not apply to this matter. However, upon further consideration following the hearing, I find that I do not have enough information to make the determination as to whether this matter falls under the jurisdiction of the *Residential Tenancy Act*.

There are many factors that go into making this determination and may differ for each of the people who are renting rooms from the Landlord. Therefore, due to the absence of the Tenants and with no documentary evidence from the Landlord, I decline to make a determination regarding jurisdiction.

I also note that as stated in rule 7.4 of the *Residential Tenancy Branch Rules of Procedure*, evidence must be presented by the party who submitted it. In the absence of the Tenants, their documentary and digital evidence was not accepted in consideration of this decision. The exception to this is the notice to vacate letter which was considered in determining whether a 10 Day Notice was served to the Tenants.

As stated in rule 7.3 of the *Rules of Procedure*, should a party not attend the hearing, the hearing may continue in their absence or their application may be dismissed. As the Tenants were not present at the hearing based on their own application, I dismiss their application. As it was determined that there was no 10 Day Notice, the Tenants'

application to cancel the 10 Day Notice is dismissed, without leave to reapply. The remainder of the Tenants' application is dismissed, with leave to reapply.

Pursuant to Section 55 of the *Act*, when a tenant applies to cancel a notice to end tenancy and their application is dismissed, I must consider whether the Landlord is entitled to an Order of Possession based on the notice to end tenancy. While the Tenants applied to cancel a 10 Day Notice, there was no 10 Day Notice submitted into evidence and the Landlord confirmed that a written eviction letter was provided to the Tenants instead. As such, I find that there is no formal notice to end tenancy in dispute and therefore the Landlord is not entitled to an Order of Possession under Section 55 of the *Act*.

### Conclusion

The application to cancel a 10 Day Notice is dismissed, without leave to reapply. The remainder of the Tenants' application is dismissed, with leave to reapply.

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 4, 2019

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Residential Tenancy Branch