



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

CNR, FFT

### Introduction

This hearing dealt with the tenants' 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 10 Day Notice) pursuant to section 46; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenants and the landlord's agents (the "landlord") appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant "SC" testified that she served the notice of dispute resolution package and evidence to the landlord by hand. The landlord confirmed receipt of the notice of dispute resolution package, along with the tenant's evidence. The tenant confirmed receipt of the landlord's evidence.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Are the tenants entitled to recover the filing fee for this application from the landlord?

If the tenants are unsuccessful in their application to cancel the 10 Day Notice is the landlord entitled to an order of possession?

### Background and Evidence

While I have considered all documentary evidence submitted and all oral testimony of the parties, I will only refer to the evidence I find relevant in this decision. Not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

The parties agreed that the tenancy began on February 01, 1994. The monthly rent was determined to be due on the first day of each month. The parties agreed that the tenants provided a security deposit in the amount of \$500.00 which continues to be held by the landlord. The landlord provided as evidence a copy of a written tenancy agreement signed by both parties, which confirms the details provided by the parties.

The parties agreed to the facts that follow. The amount of rent owed during the relevant portion of this tenancy, specifically, for the month of January 2019, forms the basis of the main contested issue giving rise to whether the tenants failed to pay rent for January 2019.

The tenants had qualified for a rent subsidy, and for the months preceding January 2019, such as rent owed for December 2018, the amount of rent owed was \$1,176.00, pursuant to the previously-approved rent subsidy. The landlord issued a letter to the tenant, dated December 18, 2018, in which the landlord wrote the following to the tenant:

“Effective January 1, 2019, your rent will be set at the economic rate of \$1,713.81 **until we have received the following: proof of EI eligibility** (in receipt of or have exhausted). [my emphasis added]

The landlord issued a 10 Day Notice, dated January 08, 2019, which the landlord states was served to the tenant on January 08, 2019, for \$538.49 in unpaid rent due on January 01, 2019, with a stated effective vacancy date of January 21, 2019.

On January 11, 2019, the tenant applied to dispute the 10 Day Notice, claiming that she paid the rent owed for January 2019 in full, and that the landlord failed to take further action after the tenant fulfilled the conditions set out in the landlord's December 18, 2018, claiming that the landlord did not follow-up to clarify what the amount of rent owed would be set at once the tenant had provided the documents requested by the landlord.

The landlord testified that an annual income review package was sent to the tenant on September 15, 2018. The landlord provided that a determination as to whether a tenant qualifies for subsidized rent as opposed to full economic rent takes into account the tenants' income. The landlord testified that once the income review packages are returned to the landlord, they are processed on a “first received, first processed” basis.

The landlord testified that the tenant was instructed to return the annual income review package to the landlord by November 01, 2018, and that the tenant complied and did so by that date. The landlord stated that the tenant's income review package was not reviewed until December 18, 2018.

The landlord provided that while reviewing the tenant's application, it was determined that additional documentation was needed for the tenant, as the landlord wanted to confirm whether the tenant was receiving employment insurance (EI) benefits.

The landlord sent the tenant a letter dated December 18, 2018 instructing her to provide documents to prove that she was no longer in receipt of EI benefits. The letter indicated that until such time that the required documents were not provided, the tenant's rent would be adjusted to the economic rental rate of \$1,713.81 for the next rental period, which would be due on January 01, 2019. The landlord testified that the tenant was not given a deadline by which to provide the documents.

The landlord testified that the tenant did provide the requested documents on December 21, 2018 to the on-site building manager (the "BM"). The landlord stated that the BM was to then forward the documents to the landlord's office for processing. The landlord stated that the office was closed for the holidays for the period of December 24, 2018 to January 01, 2019, so that no work, such as processing of applications, was completed during that period.

The landlord testified that the office continued to process applications and documents on a "first received, first processed" basis, and that the additional document provided by the tenant on December 21, 2018 was eventually processed on January 22, 2019, at which time the landlord determined that the tenant would continue to qualify for subsidised rent. The January 22, 2019 letter confirmed that effective February 01, 2019, the tenant's rent would be set at \$1,094.00, and that a retroactive rent adjustment would not be available.

The landlord testified that the tenant provided payment, in the amount of \$1,176.00, for the month of January 2019. The landlord testified that the payment of \$1,176.00 was made by way of separate payments in the amounts of \$650.00 and 526.00, both of which were provided on January 07, 2018.

The landlord understood the rent owed for January 2019 to be \$1,713.81, pursuant to the December 18, 2018 letter, and determined that an amount of \$538.49 remained outstanding. Therefore, the landlord asserted, a 10 Day Notice was issued to the tenant on January 08, 2018, for unpaid rent owed in the amount of \$538.49 for the month of January 2019.

The tenant asserted that she has adhered to the requests made by the landlord since the initial annual income review package was sent to her. The tenant testified that she returned the income review package on-time, by November 01, 2018, and that the landlord provided a follow-up letter on December 18, 2018.

The tenant provided that the letter outlined that the landlord wanted the tenant to provide documents to demonstrate that the tenant was no longer in receipt of EI benefits. The tenant testified that she acted promptly and provided the requested information by December 20, 2018 by handing the documents in-person by hand to the BM.

The tenant testified that she made numerous attempts to follow-up with the landlord to determine if the documents had been processed by the landlord and to determine what impact that would have with respect to the rent owed for January 2019. The tenant provided that she sent an email to the landlord on January 02, 2019, in which she asked whether the landlord processed the documents and asked the landlord what amount would be owed as rent for the month of January 2019.

The tenant testified that she understood that the rent for January 2019 would be raised to the economic rent rate of \$1,713.81 only if the tenant did not provide the documents requested by the landlord. The tenant testified that the landlord did not provide any information in the December 18, 2018 letter to clarify what the rent would be once the tenant had provided the requested documents.

The tenant asserted that she had also called the landlord's office number and cellphone number to follow-up to determine if the requested documents had been received and to clarify what amount of rent was owed for January 2019.

The tenant stated that she sent a follow-up email on January 09, 2018 to receive clarification from the landlord. The tenant testified that on January 09, 2019, the landlord replied to her emails and stated that the landlord did not receive the documents from the BM. The tenant provided copies of these emails as evidence.

The tenant testified that since receiving the annual income review package, she satisfied all requirements set out by the landlord. The tenant stated that once providing the information requested by the landlord in the December 18, 2018, she was left with uncertainty by the landlord, as the landlord did not reply to her emails or phone calls by providing to the tenant what amount of rent would be owed for January 2019 after the tenant provided the documents sought by the landlord.

As a result of the uncertainty, the tenant testified that on January 04, 2018 she drafted two money orders, in the amount of \$650.00 and 526.00, which totalled \$1,176.00, as the amount of \$1,176.00 was the amount the tenant paid for the preceding month of December 2018 and the months preceding the landlord's request for the annual income review package. The tenant testified that she provided payment in the amount of \$1,176.00 to the landlord on January 07, 2018.

The tenant testified that she was left uncertain as to what would happen to the amount of rent

owed after she satisfied the requirement of providing the requested documents. Therefore, the tenant asserted, she thought that at a minimum, she would owe the same amount of rent as owed for the preceding month of December 2018.

### Analysis

Section 26 of the *Act* provides, in part, the following:

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.
- (2) A landlord must provide a tenant with a receipt for rent paid in cash.

Section 46 of the *Act* provides the following:

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (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.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.

In accordance with subsection 46(4) of the *Act*, the tenant must file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenants received the 10 Day Notice on January 08, 2018. The tenants filed their application for dispute resolution on January 11, 2018. Accordingly, the tenants filed within the five day limit provided for under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, or in a matter in which the landlord seeks an Order of Possession, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice to end a tenancy for unpaid rent is based. Therefore, in the matter before me, the burden of proof rests with the landlord.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party bearing the burden of proof has not met the burden on a balance of probabilities and the claim fails.

In the matter before me, I find that, on a balance of probabilities, it is more likely than not that the tenant's testimony outlining her pattern of adhering to the landlord's request for completion of the annual income review package, followed by her subsequent adherence to the landlord's request in the December 18, 2018 letter, is an accurate depiction of events that led to the uncertainty around the correct amount of rent owed for the month of January 2019.

The landlord did not refute the tenant's testimony, and in fact, the testimony of both parties presents a very similar version of events. The only portion of the tenant's testimony disputed by the landlord was that the landlord maintained that the tenant provided the requested documents with respect to EI benefits on December 21, 2018, instead of the December 20, 2018 date stated by the tenant.

The landlord's statement, in its December 18, 2018, with respect to an increase in rent to the economic rate of \$1,713.81, is a conditional statement provided to the tenant. The landlord's statement reads:

"Effective January 1, 2019, your rent will be set at the economic rate of \$1,713.81 **until we have received the following: proof of EI eligibility** (in receipt of or have exhausted). [my emphasis added]

The landlord provides a conditional consequence, namely, that the rent will increase **until the landlord receives the requested documents**. However, the landlord does not provide to the tenant any direction or clarification with respect to what the rent amount owed on January 01, 2019 would be once the requested documents had been provided.

The tenant provided testimony to highlight the confusion caused by the landlord's conditional statement. I find that the tenant acted proactively and diligently by first providing the documents on December 21, 2018, within three days of receipt of the letter (if the later date of December 21, 2018 is accepted, as provided by the landlord), and by subsequently attempting to follow-up with the landlord by way of email and telephone to determine what amount of rent the landlord sought for the month of January 2019.

I further find that the tenant did not cause any delay since the landlord requested the tenant to complete and return the annual income review package, as the tenant did so by the due date. Instead, it was the landlord's own internal delay that left an air of uncertainty with respect to the correct amount of rent owed by the tenant.

The tenant completed and returned the annual income review package by November 01, 2018, and the landlord did not process it until December 18, 2018. Subsequently, the tenant provided the additional EI benefits documents by December 21, 2018, which the landlord admits to not having processed until January 22, 2019.

I find that this delay cannot be attributed to the tenant, and the tenant should not face a penalty or uncertainty with respect to the correct amount of rent owed due to the landlord's own delay.

I further find that despite not processing the tenants' documents (received in December 2018) until January 22, 2018, or 14 days after the landlord issued the Notice to End Tenancy and 30 days after receiving the required documents, the landlord had opportunities to assess the submitted documents and communicate with the tenants to advise of the correct amount of rent sought. The tenant attempted to contact the landlord by way of telephone and email.

The landlord issued a 10 Day Notice on January 08, 2018 and responded to the tenant's email on January 09, 2018, despite being aware of the tenant's attempts and request to contact the landlord to determine what amount of rent would be owed pursuant to the landlord's conditional statement in its December 18, 2018 letter.

Based on the foregoing, in the absence of any follow-up from the landlord subsequent to issuing a broad and unspecific conditional statement, I find that it was reasonable for the tenant to determine that, at a minimum, an amount of \$1, 176.00 was owed as rent for January 2019.

The landlord created a scenario whereby they conveyed a conditional statement to the tenant in which they stated that the rent would increase to \$1,713.81 until the tenant provided the requested documents.

I find that the onus was on the landlord to provide clear subsequent directions to the tenant in order to clarify what the expected rent would resort to once the tenant fulfilled the conditions set out in the December 18, 2018. I find that the landlord failed to do so, which resulted in reasonable confusion on the part of the tenant with respect to the correct amount of rent owed for January 2019, as the conditional sum owed in the amount of \$1,713.81 seemed to be only applicable if the tenant failed to meet the conditions set out by the landlord, which was not the case.

I further find that the landlord later determined, on January 22, 2019, that the tenants continued to qualify for a rent subsidy, and that pursuant to the recalculation of the subsidy, the tenants' rent was reduced to \$1,094.00. I find that had the landlord's own internal office practice not led to a delay in calculating the rent subsidy, the tenants would not have been placed in a situation where they faced a conditional circumstance whereby they may have been forced to pay a higher economic rent due to the landlord's delay in processing their documents.

In the absence of an adequate explanation from the landlord as to why the tenants were not provided direction with respect to what the rent owed for January 2019 would revert to once the tenants fulfilled the conditions of the December 18, 2018 letter, I find that the landlord failed to meet the burden of informing the tenants of the correct amount of rent owed for January 2019.

Essentially, the landlord created a conditional statement to which they expected the tenant to adhere, and then failed to provide direction to the tenant once the tenant adhered to the landlord's request. The onus was on the landlord to provide instruction to the tenant once the tenant met the requirements of the conditions set out in the landlord's letter, by complying with the directions given to her. It was then left to the landlord to process the documents provided by the tenant and process the tenant's application. However, the landlord let the confusion created by the conditional statement linger by not responding to the tenant and providing her with clear instructions with respect to the rent owed for January 2019.

Therefore, I find that the tenant was left to satisfy payment of rent owed for January 2019 in the absence of any direction from the landlord. I find that the tenant acted reasonably by paying the same amount of rent agreed-upon by the parties before the landlord issued the conditional statement in its December 18, 2018 letter.

Therefore, I find that the conditions did not exist for the landlord to claim that rent remained unpaid for January 2019, such that it was open for the landlord to issue a 10 Day Notice to End Tenancy for Unpaid Rent in accordance with section 46 of the Act. Based on the foregoing, I set aside the 10 Day Notice dated January 08, 2019 and determine that it is of no force and effect.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

The 10 Day Notice, dated January 08, 2018, is cancelled and is of no force or effect.

The tenancy will continue until it is ended in accordance with the Act.

**The tenant may deduct \$100.00 from a future rent payment on one occasion only** as reimbursement of the filing fee pursuant to section 72 of 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: February 06, 2019

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Residential Tenancy Branch