



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL  
CORPORATION and [tenant name suppressed to  
protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was convened in response to the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The tenant requested:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

While the tenant participated in the conference call, the landlord did not. I waited until 9:40 a.m. to enable the landlord to participate in this scheduled hearing for 9:30 a.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant provided Canada Post Tracking documentation to show that she served the landlord the Notice of Hearing Package and her application by way of registered mail on February 6, 2019. Pursuant to section 90 of the Act, the landlord is deemed to have received the package five days later, accordingly, I am satisfied that the tenant has served the landlord the Notice of Hearing package and her application pursuant to sections 89 and 90 of the Act. The hearing proceeded and completed in the landlords absence.

### Issue(s) to be Decided

Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled? If not, is the landlord entitled to an order of possession.

## Background and Evidence

The tenant testified that she has lived in the unit “for about three and half years” and that her monthly rent of \$826.00 is due on the first of each month. The tenant testified that due to a clerical error at Canada Post, her rent was not submitted to the landlord on February 1, 2019 as required. The tenant testified that she received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 2, 2019. The tenant testified that full payment was provided and accepted by the landlord on February 6, 2019. The tenant testified that the landlord wrote on the back of the notice “rescinded” and that her tenancy was reinstated. The tenant advised that she wishes for this to be recorded in this hearing for her peace of mind.

## Analysis

Section 46 of the Act addresses the issue before me as follows:

### **Landlord's notice: non-payment of rent**

**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.

The tenant provided documentation to support her claim that the rent was paid within five days of receiving the notice and that the landlord had written “rescinded” on the

back of the notice. Based on the documentation before me, the undisputed testimony of the tenant and in the absence of any disputing evidence from the landlord, I hereby cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2019; it is of no effect or force.

Conclusion

The notice to end tenancy is cancelled. The tenancy continues.

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: March 19, 2019

---

Residential Tenancy Branch