



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: OPRM-DR, FFL  
For the tenant: CNR, DRI, FFT

### Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) from both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2019 (“10 Day Notice”), for a monetary claim of \$4,300.00 for unpaid rent and utilities, which the landlord later clarified was \$300.00 for unpaid rent and \$4,000.00 in damages, and to recover the cost of the filing fee. The tenant applied to cancel the 10 Day Notice, and to dispute a rent increase and to recover the cost of the filing fee.

The landlord, the agent of the landlord AL (“agent”) and the tenant attended the teleconference hearing. The parties had the hearing process explained to them and were affirmed. The parties were also provided an opportunity to ask questions about the hearing process.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matters

Firstly, the landlord was advised that since the tenant continues to occupy the rental unit and the tenancy has not yet ended, and taking into account that the landlord failed to formally amend their application for damages, I find the landlord’s claim for \$4,000.00 in damages to the rental unit is premature as the tenant would have until the end of the tenancy to repair any alleged damages. Therefore, I dismiss the landlord’s application

for damages as that claim is premature, with leave to reapply once the tenancy has ended.

Secondly, the parties confirmed their email addresses during the hearing. The parties were advised that the decision would be emailed to the parties at their respective email addresses.

### Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Should the tenancy continue or should an order of possession be granted?
- Does the tenant's claim to dispute a rent increase have any merit?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The parties confirmed that the original tenancy agreement, which began in 2016, could not be located by either party. The parties agreed that a new tenancy agreement began as of January 1, 2019, when a new written tenancy agreement was signed by the parties. A copy of the new tenancy agreement was submitted in evidence. The parties agreed that monthly rent since January 2019 was \$1,150.00 per month and is due on the first day of each month.

A copy of the 10 Day Notice was submitted in evidence. The 10 Day Notice is dated March 2, 2019 and the tenant confirmed receiving the 10 Day Notice on the same date. The tenant applied to dispute the 10 Day Notice on March 6, 2019 which is within the five day timeline provided under section 46 of the *Act*. The amount owing listed on the 10 Day Notice is \$300.00 in rent owing as of March 1, 2019. The effective vacancy date listed on the 10 Day Notice is March 12, 2019.

The agent testified that the tenant has only paid \$1,000.00 for February 2019 and \$1,000.00 for March 2019 and that the tenant owes \$150.00 for February 2019 rent and \$150.00 for March 2019 rent, for a total of \$300.00 in rent. The tenant testified that she paid \$1,150.00 in cash for February 2019 and paid \$1,200.00 in cash for March 2019.

The agent agreed that cash was received for both February 2019 and March 2019 from the tenant, but that the amount is not correct as claimed by the tenant. The agent stated that she did not issue a receipt for rent paid in cash at the time the tenant paid rent for February and March 2019 because "the tenant did not ask for a receipt."

Regarding a rent increase, the agent confirmed that the tenant was advised that she would have to pay more utilities due to having additional occupants in the rental unit. The tenancy agreement does not include any terms regarding additional rent or utilities for additional occupants. The tenancy agreement did not include an addendum. The parties agreed that there was not agreement in writing that the tenant would pay additional rent for additional occupants.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 10 Day Notice, there is a reverse onus of proof on the tenant to provide sufficient evidence that rent was paid to the landlord. As the parties provided contradictory testimony as to the amount of rent paid, I must then consider section 26 of the *Act*.

Section 26(2) of the *Act* states the following:

#### **Rules about payment and non-payment of rent**

**26** (2) A landlord must provide a tenant with a receipt for rent paid in cash.

[Emphasis added]

Firstly, I find the agent's statement that a receipt was not provided because the tenant did not ask for a receipt is inconsistent with the requirement under section 26(2) of the *Act*, which requires the landlord to issue a receipt for all rent payments paid in cash. The *Act* does not state by request of the tenant. Secondly, although the agent claims that receipts were later issued over a month later of the February 2019 cash rent payment, I find that the landlord breached the *Act* by not complying with section 26(2) of the *Act* when rent payments were made in cash by the tenant in both February and March of 2019. Therefore, I find the action of the landlord and/or agent resulted in the tenant being unable to prove what amount of rent was paid due to failing to issue rent receipts until the tenant requested them from the landlord. I find that waiting for the tenant to request receipts and then generating those receipt within two days of the tenant filing their application does not negate the original breach of the *Act* by the landlord.

Based on the above, I find the 10 Day Notice is not valid and that the tenant was unable to provide proof that rent was paid by cash due to the landlord's breach of the *Act* by failing to issue a rent receipt in February 2019. Therefore, I cancel the 10 Day Notice as a result. The 10 Day Notice is of no force or effect.

Regarding the rent increase, as neither party submitted a Notice of Rent Increase and the parties confirmed that there was no signed agreement of the parties to address additional rent or utilities for additional occupants, I find that rent remains as stated in the tenancy agreement, which is \$1,150.00 per month and is due on the first day of each month. I also find that the tenant's application to dispute an additional rent increase is premature as the tenant has not been served with a Notice of Rent Increase form which is required under the *Act*.

The landlord's application fails and is dismissed without leave to reapply as the 10 Day Notice has been cancelled.

The tenant's application is partly successful as the 10 Day Notice has been cancelled.

**I ORDER** that the tenancy to continue until ended in accordance with the *Act*.

As the tenant's application did have merit, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the *Act*. I grant the tenant a one-time rent reduction in the amount of \$100.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to section 67 of the *Act*. The one-time rent reduction will be deducted from a future month's rent.

### Conclusion

The 10 Day Notice dated March 2, 2019, has been cancelled. The tenancy has been ordered to continue until ended in accordance with the *Act*.

The landlord's application did not have merit and is dismissed. As noted above, the landlord has liberty to reapply for damages once the tenancy has ended.

The tenant's application is partly successful.

The filing fee for the tenant has been addressed above.

This decision will be emailed to the parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 26, 2019

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Residential Tenancy Branch