



# 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 an Application for Dispute Resolution by the Tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued April 4, 2019. The matter was set for a conference call.

Both Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

### Issues to be Decided

- Should the 10-Day Notice be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to the recovery of her filing fee for this application?

### Background and Evidence

Both parties confirmed that the tenancy began on August 6, 2018, as a one-year fixed term tenancy. Rent in the amount of \$1,100.00 is on the first of each month, and that the Tenant paid the Landlord a \$550.00 security deposit and a \$200.00 pet damage deposit.

Both the Tenant and the Landlord agreed that a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) was served by posting it to the door of the rental unit on April 4, 2019, with rent of \$1,100.00 and a \$350.00 pet damage deposit, listed as outstanding at the time of service.

The Landlord testified that she received the full outstanding rent of \$1,100.00 on April 4, 2019, but that the Tenant had not paid the outstanding pet damage deposit.

The Tenant stated she had paid the outstanding rent as indicated on the Notice within the required timeline but that she had not paid the requested pet damage deposit.

### Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord served the Notice to End Tenancy on April 4, 2019, by attaching it to the door of the Tenant's rental unit, which is an approved method of service provided for under section 88 of the *Act*.

I accept the Tenants testimony that she received the Notice that same day, on April 4, 2019. I have reviewed the Notice and noted that it was recorded on the Notice that rent for April 2019, was outstanding, in the amount of \$1,100.00. The Notice also recorded, in the unpaid utility section, that a \$350.00 was outstanding; however, the word utilities had been crossed out and "Pet Deposit" has been written in, with a pen.

Notices issued by landlords to end a tenancy must be issued on a Residential Tenancy Branch (RTB) approved form. In this case, the Landlord used RTB form #30, which is a 10-Day Notice for unpaid rent or utilities, pursuant to section 46 of the *Act*.

**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.

As shown above, section 46 of the *Act* limits a notice issued under that section to “non-payment of rent.” The *Act* defines rent as follows:

**"rent"** means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*;

Pursuant to the definition of rent contained in the Act, I find the inclusion of an unpaid pet damage deposits amount, on this Notice to be incorrect. Therefore, I find it appropriate to strike the unpaid pet damage deposit, in the amount of \$350.00, from this Notice. I will continue in these proceedings regarding the unpaid rent amount as indicated on the Notice.

When a tenant receives a 10-Day Notice to end the tenancy for unpaid rent, the *Act* provides five days in which the tenant may pay the full outstanding rent amount indicated on the notice. If a tenant does this, the notice is of no effect, as per section 46(4) of the *Act*. Accordingly, I find that the Tenant had until April 12, 2019, to either

pay the outstanding rent as indicated on the notice or file an application for dispute resolution to dispute the Notice.

I accept the testimony of the Landlord that she received the full outstanding rent as indicated on the Notice on April 4, 2019. I find that the Tenant did pay the outstanding rent due within five days of receiving the Notice, as allowed by the *Act*, rendering the Notice of no effect.

Consequently, I grant the Tenant's application to cancel the Notice issued April 4, 2019, and I find the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in her application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. I grant permission to the Tenant to take a one-time deduction of \$100.00, from her next month's rent.

### Conclusion

The Tenant's application to cancel the Notice issued April 4, 2019, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

I grant the Tenant permission to take a one-time deduction of \$100.00, from his next month's rent.

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: May 24, 2019

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Residential Tenancy Branch