



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNR, MNDCT, RP, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 10, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 4, 2019 (the "10 Day Notice");
- a monetary order for damage or compensation;
- an order for regular repairs; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord and the Landlord's Representative, L.Y., attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord by registered mail on April 13, 2019. L.Y. confirmed receipt. L.Y. stated that the Landlord served the Tenant with her documentary evidence by placing it through the Tenant's mail slot on May 24, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act* (*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*.

### Preliminary Matters

The Tenant made an amendment to her Application on April 30, 2019 to include a request for a monetary order for damage or compensation. The Tenant stated that she served the amendment to the Landlord by registered mail on May 3, 2019. L.Y. confirmed receipt.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator their discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

As such, the Tenant's request for a monetary order for damage or compensation, and a request for a repair order are dismissed with leave to reapply.

#### Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice dated April 4, 2019, pursuant to Section 46 of the *Act*?
2. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
3. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties agreed that the tenancy began on December 1, 2013. The parties disagreed to the amount of rent owed to the Landlord each month. The Tenant testified that currently, rent in the amount of \$1,793.65 is owed to the Landlord on the first day of each month. L.Y. stated that \$1,749.90 is owed to the Landlord on the first day of each month. The parties agreed that the Tenant paid a security deposit in the amount of \$800.00 and a pet deposit in the amount of \$500.00.

L.Y. stated that the Landlord served the Tenant a 10 Day Notice dated April 4, 2019 as the Tenant failed to pay rent in the amount of \$1,649.90 when due on April 1, 2019. L.Y. stated that the Landlord eventually received the Tenant's rent via e-transfer; however it was paid late. L.Y. stated that the Tenant has paid rent on time for May 2019 and therefore the Landlord was willing to cancel the 10 Day Notice dated April 4, 2019.

The Tenant stated that she paid rent to the Landlord on April 1, 2019 via email transfer to the email address that was provided to the Tenant during a previous dispute resolution hearing. The

Tenant stated that it appears as though the Landlord provided an incorrect email address at the time of the hearing, which resulted in the Landlord not receiving the email transfer sent by the Tenant on April 1, 2019. The Tenant stated that once she received the correct email address from the Landlord, the Tenant re-sent the rent to the Landlord to the corrected email address.

### Analysis

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

The Tenant applied to cancel the 10 Day Notice dated April 4, 2019. During the hearing, the Landlord agreed to cancel the 10 Day Notice. As such, I set aside the 10 Day Notice. I order that the tenancy continues in accordance with the Act.

As the Tenant was successful with her Application, I find that the Tenant is entitled to the return of the filing fee paid to make the Application. I order that the Tenant deduct \$100.00 from one (1) future rent payment.

### Conclusion

The Landlord agreed to cancel the 10 Day Notice. The tenancy will continue in accordance with the Act. The Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

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 29, 2019

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Residential Tenancy Branch