



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDCT, OLC, RP

### Introduction

On April 10, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking monetary compensation pursuant to Section 67 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, and seeking a repair Order pursuant to Section 32 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not make an appearance. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by hand on or around April 12, 2019, with her mother as a witness. However, her mother did not attend the hearing to confirm service nor did the Tenant provide any proof of this service. However, without any contrary evidence before me, I am satisfied of the Tenant’s undisputed testimony that service of this package complied with Sections 89 and 90 of the *Act*. As such, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that she did not serve the Landlord with her evidence. As such, I have excluded this evidence and have not considered it when rendering this decision. However, the Tenant was allowed to provide testimony with respect to this evidence during the hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

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 complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant stated that the tenancy started on or around March 1, 2018 and that rent was currently established at \$500.00 per month, due on the first of each month. However, she stated that a new manager took over and reduced the rent to \$400.00 per month on the condition that he would not make any repairs. A security deposit of \$250.00 was paid.

She advised that the Notice was posted to the door on April 2, 2019; however, this was contrary to the information provided on her Application which stated that the Notice was served in person on April 4, 2019. The Tenant then stated that her mother advised her that the Notice was posted on the door, and found, on April 4, 2019.

The Tenant did not submit a copy of the Notice as documentary evidence and did not have this in front of her to refer to. However, she did confirm that she paid \$800.00 on

April 29, 2019. She also confirmed that she did not have authority under the *Act* to withhold the rent.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Based on the Tenant's affirmed testimony, the Tenants received the Notice on April 4, 2019. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that "*If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.*"

As the fifth day fell on Tuesday April 9, 2019, the Tenants must have paid the rent in full or disputed the Notice by that date at the latest. The undisputed evidence is that the Tenants made this Application on April 10, 2019, and there is no evidence before me that permitted the Tenants to withhold the rent.

As outlined above, the undisputed evidence is that rent was not paid in full when it was due nor was it paid within five days of the Tenants receiving the Notice. Moreover, the Tenants did not establish that they had a valid reason for withholding the rent pursuant to the *Act*. Furthermore, the Tenants appear to have disputed the Notice one day late.

However, as there is no Notice that has been submitted before me, and as the Landlord has not appeared to speak to the Notice, I am not satisfied that the Landlord has served the Tenants a valid 10 Day Notice to End Tenancy for Unpaid Rent.

As such, I dismiss the Tenants' Application without leave to reapply.

### Conclusion

I dismiss the Tenants' Application, with respect to the Notice to end tenancy, without leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

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 28, 2019

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Residential Tenancy Branch