



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR OLC FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice), pursuant to section 46 of the *Act*,
- an Order for the landlord to comply with the *Act*, regulation, and/or tenancy agreement pursuant to section 62 of the *Act*, and
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord attended with an assistant D.G. to assist with translation.

As both parties were present, service of documents was confirmed. The tenants testified that they served the landlord with their application for dispute resolution with the notice of this hearing and their documentary evidence in person, which was confirmed received by the landlord. The tenants submitted digital evidence consisting of a video recording, however, the landlord disputed receipt of the video evidence.

Rule 3.10.4 of the Residential Tenancy Branch Rules of Procedure explains the requirements for serving digital evidence, as follows, in part:

#### 3.10.4 Digital evidence served to other parties

Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using *Digital Evidence Details* (form RTB-43).

As the tenants failed to submit form RTB-43 to confirm that the landlord was able to view the evidence, I advised the parties that I would not consider the tenants video evidence in this matter.

The landlord testified that his evidence was personally served on the tenants, which was confirmed received by the tenants.

Therefore, based on the testimonies of the parties, I find that the notice of this hearing and evidence, save for the tenants' video evidence, was served in accordance with the *Act* and the Rules of Procedure.

#### Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the 10 Day Notice?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Are the tenants entitled to recover the cost of the filing fee for this application from the landlord?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties confirmed that there was no written tenancy agreement between them. The tenants explained that they originally started their tenancy in the rental unit, which consisted of a house, in October 2013, with a previous owner of the home. At that time, the tenants testified that their monthly rent was \$1,400.00 payable on the first or second day of the month. The tenants testified that they paid a security deposit of \$700.00 which has never been returned to them. The tenants also testified that water utilities were included in their rent as they did not pay any separate amount for water utilities.

After approximately two years, the owner sold the rental unit and the second owner assumed the tenancy agreement with the tenants. At some point during this tenancy, the tenants agreed to help out with making a contribution to the water utilities cost. The

tenants estimated that they may have paid approximately \$400.00 per year towards the water utilities.

In June 2016, the second owner sold the rental unit to the current landlord, who assumed the tenancy. The tenants' current monthly rent is \$1,768.00. The parties are in dispute regarding when the rent payment is due, however the tenants acknowledged their understanding to be "at the beginning of the month".

The tenants confirmed that on June 7, 2019, they received in person the 10 Day Notice dated June 7, 2019.

A copy of the 10 Day Notice was submitted into evidence by the tenants. The notice stated that \$1,068.00 of unpaid rent was owed as of June 1, 2019 and that \$1,160.12 in unpaid utilities was owed following the written demand on June 1, 2019.

The landlord confirmed that he received the outstanding June rent payment of \$1,068.00 from the tenants on June 10, 2019.

The tenants disputed ever receiving a written demand for utilities payment and argued that their tenancy agreement does not require them to pay water utilities.

The landlord confirmed that he failed to serve the tenants with a written demand for the utilities 30 days prior to issuing the 10 Day Notice.

Both parties indicated a willingness to continue the tenancy with conditions, and therefore I offered the parties an opportunity to come to a settlement of their dispute in accordance with section 63 of the *Act*. After considerable time spent on negotiations, the parties were unable to reach a settlement of their dispute, and as such, this dispute was determined by way of arbitration.

### Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. If a tenant fails to pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing proper written notice to end tenancy using a 10 Day Notice to End Tenancy.

A tenant who receives a 10 Day Notice to End Tenancy under section 46 of the *Act* has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In this case, I find that the tenants received the 10 Day Notice on June 7, 2019 and filed an application to dispute the notice on June 10, 2019. Accordingly, the tenants complied with the five-day time limit provided by section 46 of the *Act*.

Further to this, I find that there is no dispute that the tenants paid the landlord the outstanding amount of rent owed within five days of receiving the 10 Day Notice.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

In this matter, there was no dispute that the landlord failed to serve the tenants with a written demand for payment of utilities 30 days prior to issuing the 10 Day Notice. It is also undisputed that the tenants paid the amount of rent owed on the 10 Day Notice within five days of receiving the notice. As such, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord has failed to meet the burden to prove the grounds on which the 10 Day Notice is based.

Therefore, the landlord's 10 Day Notice is cancelled and of no force or effect. As the tenants were successful in their application to dispute the 10 Day Notice, I find that the tenants are entitled to recover the cost of the \$100.00 filing fee paid for the application.

I order that the tenants deduct the \$100.00 filing fee from their rent payment on one (1) occasion.

In summary, the tenancy continues until ended in accordance with the *Act*.

### Conclusion

The tenants were successful in their application to dispute the 10 Day Notice dated June 7, 2019, therefore the notice is cancelled and of no force or effect, and the tenancy continues, until ended in accordance with the *Act*.

The tenants are entitled to recover the \$100.00 filing fee paid for the application through a one-time deduction from their monthly 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: July 09, 2019

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Residential Tenancy Branch