



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This hearing dealt with the tenants' application pursuant to section 46 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was assisted by an advocate/assistant because that person advised that the landlord had experienced a stroke and was not able to handle this matter without some assistance. Although the landlord was able to communicate their wishes, often with the assistance of the advocate/ assistant, it was apparent that the landlord needed this level of support and assistance in order to present their position with respect to the sequence of events leading to the tenants' application.

As Tenant RA (the tenant) confirmed that they were handed the 10 Day Notice by the landlord on June 5, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package and written sent by the tenants by registered mail on June 17, 2019, I find that the landlord was duly served with this material in accordance with sections 88 and 89 of the *Act*. The landlord did not provide any written evidence for this hearing.

### Issues(s) to be Decided

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

### Background and Evidence

The tenants gave sworn testimony that they signed a Residential Tenancy Agreement (the Agreement) with the landlord in 2015, for a tenancy for the landlord's manufactured home in the landlord's manufactured home park. There are eight other manufactured homes in this park, plus a house. Although the landlord did not believe that a written Agreement was signed, the parties agreed that monthly rent was set at \$800.00, payable in advance on the first of each month.

The tenant gave undisputed sworn testimony that the tenant worked for the landlord on maintenance of the park and care for the grounds until June 1, 2019. The tenant gave undisputed sworn testimony that the tenant's one-half of the monthly rent was waived until June 1, 2019, in exchange for the services the tenant performed on the park as a maintenance person/groundskeeper. The tenant testified that the landlord issued the tenants a 10 Day Notice identifying \$2,400.00 in unpaid rent owing for this tenancy almost immediately after the landlord fired the tenant.

The landlord's advocate/assistant testified that the \$2,400.00 identified as owing in unpaid rent as of June 1, 2019, was for rent that the other tenant, Tenant SL, had not paid the landlord.

The landlord was somewhat confused as to whether monthly rent had been paid for either June or July 2019. The tenant said that they handed the landlord an \$800.00 cheque for the rent for July 2019, which the landlord had cashed.

The tenants produced signed receipts from the landlord for Tenant SL's rent payments. However, the tenants agreed that since at least March 2019, Tenant SL had not actually paid any of the \$400.00 in cash receipts identified in the receipts signed by the landlord. They explained that the landlord's property manager (Witness DE) who had acted for the landlord throughout their tenancy had looked into the tenants' complaints about their unusually high hydro bills during this tenancy. Witness DE confirmed the tenants' assertion that improper wiring had been identified as the problem, which had led to the tenants' hydro bills being as high \$495.00 some months during their tenancy. After consulting with the landlord, Witness DE in his role as property manager for the park, a position he had held for five years, issued receipts for rent payments by Tenant SL as a way of compensating the tenants for the landlord's failure to address their concerns about the hydro costs earlier. The tenants gave undisputed sworn testimony that they started raising concerns about the high hydro costs as soon as they started receiving hydro bills for this tenancy in 2015. I heard undisputed sworn testimony that it was not until January 2019, that the landlord took effective action to repair electrical wiring that

both posed a safety hazard and had led to unusually high hydro costs during this tenancy.

Witness DE gave sworn testimony that he continued to act on the landlord's behalf and had the landlord's full authority to do so. Witness DE said that his role had become more important since the landlord had suffered a stroke as the landlord's mind was "a little muddled" at times and would likely continue that way for awhile until the landlord fully recovered. Witness DE said that his review of the hydro records confirmed that since this tenancy began, the tenants had encountered hydro charges that were at least \$1,600.00 higher than they should have been. As the landlord could not reimburse them for this overcharge with cash, Witness DE said that the landlord had agreed to allow the tenants to refrain from paying \$400.00 of the rent due for this tenancy for at least four months. Witness DE said that the tenants were given permission by the landlord to not pay \$400.00 in rent for March, April, May and June this year. Since it would be unclear until September 2019 as to whether the tenants were entitled to any more compensation by way of a rent waiver beyond June 30, Witness DE said that the tenants understood that they would have to pay full rent as of July 2019.

When Witness DE was first introduced as a witness, the landlord maintained that Witness DE was no longer the landlord's property manager as he had released Witness DE from that employment role a few months ago. The landlord's advocate/assistant explained that although the landlord had signed the receipts for payments of rent by Tenant SL, that he did so at a time when he was having difficulty managing the affairs of the manufactured home park and was relying on documents prepared by other, in this case, apparently Witness DE. As the landlord's health gradually improved, the landlord realized that the arrangement he had been signing off on with the tenants was not a proper way to address this situation, as no actual rent was being received from Tenant SL. Neither the landlord nor the landlord's advocate/assistant could clarify how the landlord had arrived at the \$2,400.00 amount shown as unpaid in the 10 Day Notice, or which months the landlord was claiming remained unpaid.

After Witness DE gave sworn testimony that as far as he knew he was still the landlord's property manager, I asked the landlord when and how the landlord had informed Witness DE that he was no longer the landlord's property manager. The landlord testified that he had never given Witness DE any official or written notice that they were no longer his property manager. The landlord then advised that by way of this hearing, the landlord was informing Witness DE that he was no longer the landlord's property manager.

### Analysis

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.” Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “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.”

In this case, the tenants have provided compelling written evidence in the form of receipts prepared by the landlord's then property manager, Witness DE, and signed by the landlord confirming that rent was paid and received for the months in question immediately preceding the landlord's issuance of the 10 Day Notice. While the parties have not used a standard way of compensating the tenants for the landlord's involvement in the overcharged hydro costs the tenants encountered until the landlord took action to repair their hydro connection, I find that the arrangement they implemented was agreed upon by both parties. This led to the production of receipts that were signed by the landlord and with the assistance of the landlord's then property manager. As noted above, the landlord was unable to provide any level of detail on how they arrived at the \$2,400.00 figure for unpaid rent identified in the 10 Day Notice or which months this alleged unpaid rent covered. There is also evidence that the landlord accepted and cashed the tenants' \$800.00 payment for rent for the month of July 2019, which also appears to have reinstated this tenancy. For these reasons, I allow the tenants' application to cancel the 10 Day Notice.

Monthly rent for this tenancy remains at \$800.00, payable in advance by the first of each month.

Should the parties agree to any further compensation for issues pertaining to the hydro problems that the tenants experienced prior to the landlord's repairs earlier this year, I order the landlord to issue a specific receipt for such a payment, one which specifically mentions the purpose of such a payment. During the remainder of this tenancy, all receipts for monthly rent are to clearly identify that the payment was received for rent for the specific month question and not in lieu of other payments between the parties.

### Conclusion

The tenants' application to cancel the 10 Day Notice is allowed. That Notice is set aside and of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

The current monthly rent is set at \$800.00, payable in advance on the first of each month, until revised in accordance with the *Act*.

I order the landlord to issue receipts to the tenants for all payments made by the tenants during the remainder of this tenancy and to clearly and accurately identify the purpose of these payments.

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 26, 2019

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Residential Tenancy Branch