



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 20, 2019 (the “Application”). The Tenant disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 16, 2019 (the “Notice”). The Tenant sought reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord provided the correct spelling of his name and this is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession based on the Notice?
3. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started July 01, 2016 and is a month-to-month tenancy. The parties agreed rent is \$1,130.00 per month. Rent is due on the first day of each month.

Neither party had submitted a copy of the Notice. The Landlord had submitted a copy of the Notice on another file. I explained to the parties that I would have allowed the Landlord to submit a copy of the Notice after the hearing and sought permission to simply refer to the Notice on File Number 1. The Tenant did not take issue with me doing so.

The Notice states that the Tenant failed to pay \$1,130.00 in rent due June 01, 2019.

The Landlord testified that the Notice was sent to the Tenant by registered mail June 17, 2019. The Tenant acknowledged receiving the Notice June 19, 2019.

The issue in this matter is that the Tenant sent the Landlord rent by e-transfer; however, someone other than the Landlord accepted the money and deposited it into their account so the Landlord did not receive the money.

The Landlord testified as follows. The Tenant usually paid rent by e-transfer. He had not received rent by June 2<sup>nd</sup> or 3<sup>rd</sup> so emailed the Tenant asking about it. The Tenant confirmed she sent it. The Tenant did not cancel and re-send the payment. He contacted his bank to look into what happened with the e-transfer but as the receiver of it, they would not give him this information. He told the Tenant it was up to her as the sender to figure out what happened with the e-transfer. He never received the money.

The Landlord did not dispute that the e-transfer was sent. He said the issue is he never received the money. The Landlord acknowledged that the e-transfer was accepted but said it was not accepted by him. The Landlord said the issue was with the password used as it was too simple and it was the same password used for the last three years.

The Landlord submitted a document about an e-transfer which I do not find helpful given the lack of detail connecting this document to the e-transfer in question.

The Tenant took the position that she paid rent. She testified that she could not cancel the e-transfer when the Landlord asked about it because it had already been accepted. She looked into the issue and the money was accepted and records show it was

accepted by the Landlord. The Tenant testified that she called the fraud department of the bank which traced the money to the Landlord's email. The Tenant acknowledged that the money did not go into the Landlord's account and that it was re-directed somewhere else. The Tenant testified that she was told it is up to the Landlord to look into it as it was sent to his email and accepted.

Both parties agreed the Tenant did not pay further rent for June.

The Tenant submitted documentary evidence showing the e-transfer was sent to the Landlord June 02, 2019 and that the status was "Payment Received" as of June 05, 2019. The Tenant submitted documentary evidence showing the e-transfer was accepted June 02, 2019 at 18:27:31.

The Tenant submitted correspondence regarding the issue with the e-transfer. It shows the Landlord emailed her about June rent June 03, 2019. It includes correspondence between the parties outlining the issue with the e-transfer and discussions they had with the bank and others.

### Analysis

Section 26(1) of the *Residential Tenancy Act* (the "*Act*") requires tenants to pay rent when it is due under the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail to pay rent and states:

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...

(4) Within 5 days after receiving a notice under this section, the tenant may...

(b) dispute the notice by making an application for dispute resolution.

Given the testimony of the parties, I accept that the Tenant received the Notice June 19, 2019. The Tenant filed the Application June 20, 2019, within the 5-day time limit.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord who has the onus to prove the grounds for the Notice.

I am not satisfied the Tenant failed to pay rent. The documentary evidence shows that the Tenant sent the Landlord an e-transfer which was accepted by the Landlord June 02, 2019 at 18:27:31. The Landlord did not submit that the e-transfer was sent to the wrong email address. I find the Tenant fulfilled her obligation to pay rent to the Landlord.

I understand the parties to agree that someone other than the Landlord accepted the rent and put the rent money into a different account. I do not find this to be the Tenant's fault. According to the Landlord, the Tenant had paid rent by e-transfer for three years. The Landlord did not submit that he had ever objected to the Tenant paying rent by this method. There would be no reason for the Tenant to think this was an unsecure method of paying rent.

I do not accept that the Tenant should have cancelled the e-transfer as I accept her testimony that it had been accepted prior to her hearing from the Landlord about an issue as this is supported by the documentary evidence submitted.

I do not accept that this situation is the Tenant's fault because of the password used as the Landlord said it was the same password used for the last three years. There would be no reason for the Tenant to think there would be an issue with it now.

If someone got into the Landlord's email account and accepted the e-transfer on his behalf, this is an issue with the Landlord's email account and not an issue with anything the Tenant did.

This is not a situation where the Tenant failed to send the e-transfer and therefore failed to pay rent or sent it to the wrong email address and therefore failed to pay the Landlord rent. In these situations, I would agree the Tenant failed to pay rent. Here, the Tenant did pay rent and someone with access to the Landlord's email accepted that rent. This is an issue on the Landlord's end, not the Tenant's end.

I am not satisfied the Tenant failed to pay rent as required. I am not satisfied the Landlord had grounds to issue the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful in this application, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Tenant is permitted to deduct \$100.00 from one future rent payment pursuant to section 72(2) of the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant is awarded reimbursement for the \$100.00 filing fee. The Tenant is permitted to deduct \$100.00 from one 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 *Act*.

Dated: August 14, 2019

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Residential Tenancy Branch