



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STRATTON VENTURES LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, FFT

### Introduction

On August 12, 2019, the Tenants made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 2, 2019. On September 19, 2019, the Tenants amended the application to include a request to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 7, 2019.

The matter was set for a conference call hearing. The Tenant and her advocate attended the teleconference hearing; however, the Landlord did not. The Tenant's advocate submitted that the Notice of Dispute Resolution Proceeding documents were served to the Landlord using registered mail sent on August 14, 2019 and September 10, 2019. The Tenant's advocate submitted that the registered mail was signed for by the Landlord. The Tenant provided a copy of the registered mail receipts as proof of service. I find that the Landlord was served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the Act. The Landlord failed to attend the hearing to pursue enforcement of the 10 Day Notices.

The Tenant was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

Issues to be Decided

- Should the 10 Day Notice dated August 2, 2019 and August 7, 2019, be cancelled?

Background and Evidence

The Tenant testified that the tenancy began on June 1, 2017, on a month to month basis. Rent in the amount of \$676.00 is due to be paid to the Landlord by the first day of the month.

The Tenant testified that she was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2019. The Notice indicates the Tenant failed to pay the rent in the amount of \$676.00 due August 1, 2019

The Tenant testified that she was served with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 7, 2019. The Notice indicates the Tenant failed to pay the rent in the amount of \$1,397.00 due August 1, 2019.

The 10 Day Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

The Tenant testified that she has a pre-authorized debit plan agreement in place with the Landlord for payment of rent. The Tenant provided a copy of the agreement which is dated May 28, 2019. The agreement indicates that the Landlord is authorized to debit the Tenants account for the monthly rent.

The Tenant testified that the Landlord did not attempt to take the rent on August 1, 2019. The Tenant provided a bank statement for the same account linked to the pre-authorized debit plan agreement showing that there was sufficient funds available in the account on August 1, 2019.

The Tenant's advocate submitted that the Landlord failed to take the rent on August 1, 2019, and that this does not amount to a late rent payment that can be used against the Tenant.

The Tenant testified that the rent owing under the tenancy agreement was paid in full to the Landlord on August 7, 2019. The Tenant provided a copy of a rent receipt indicating

that a cash payment of \$1,397.00 was received by the Landlord on August 7, 2019, for July and August rent. The Tenant testified that the Landlord improperly charged her an additional \$45.00 for either a late rent charge or an NSF charge.

### Analysis

Section 26 of the Act provides that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Based on the evidence before me, the testimony of the Tenant, and on a balance of probabilities, I find that the Tenants have an agreement with the Landlord for the Landlord to debit their account each month for rent. I find that the Tenants had sufficient funds to cover the rent on August 1, 2019.

I find that the Tenants paid the rent due under the tenancy agreement on August 7, 2019 which is within five days of receiving the notices to end tenancy. The 10 Day Notice dated August 2, 2019, and the 10 Day Notice dated August 7, 2019, are set aside.

The tenancy will continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since I find that the Tenants had sufficient funds to pay the rent in their account on August 1, 2019, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenants to withhold \$100.00 from one (1) future rent payment.

### Conclusion

The Tenants paid the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2019 and August 7, 2019.

The 10 Day Notice dated August 2, 2019, and the 10 Day Notice dated August 7, 2019, are therefore set aside.

The tenancy will continue until ended in accordance with the Act.

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: October 04, 2019

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Residential Tenancy Branch