



# Dispute Resolution Services

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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 Tenants on October 15, 2019 (the “Application”). The Tenants disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 08, 2019 (the “Notice”) and sought reimbursement for the filing fee.

The Tenants and Landlord appeared at the hearing. The parties agreed at the outset that the Tenants vacated the rental unit October 20, 2019. Given this, the Tenants withdrew the dispute of the Notice. The Tenants continued to seek reimbursement for the filing fee.

I explained the hearing process to the parties. The parties provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord said she submitted evidence; however, I had not received this. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package and Tenants’ evidence. The Tenants advised they received evidence from the Landlord for a different file. I proceeded given the hearing package was served. I did not go into the evidence issue further given the only issue before me is the filing fee.

The parties were given an opportunity to make relevant submissions. I have considered the oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Tenants entitled to reimbursement for the filing fee?

### Background and Evidence

The parties agreed there was a sublease between them in this matter. The Landlord testified as follows. Someone else owns the rental unit. She rents the rental unit from the owner and pays the owner rent each month. She has the owner's permission to sublet the rental unit.

Tenant W.R. testified as follows. The Tenants are entitled to the filing fee because the Landlord issued the Notice when they were vacating on October 20, 2019 in any event. There was no reason for the Landlord to issue the Notice.

Tenant W.R. acknowledged that the Tenants did not pay October rent and acknowledged the tenancy was ongoing up until October 20, 2019. Tenant W.R. also acknowledged the Tenants had no authority under the *Residential Tenancy Act* (the "Act") to withhold rent.

The Landlord testified that the Tenants did not pay rent and she issued the Notice on the first of the month.

### Analysis

I decline to award the Tenants reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Reimbursement for the filing fee is awarded when a party is successful in their application. The Tenants were not successful in disputing the Notice because they had vacated the rental unit and therefore withdrew the dispute of the Notice. I note that the result would have been the same had the Tenants not withdrawn their dispute as I would have dismissed it without leave to re-apply on the basis that it was a moot point. In either circumstance, the Tenants have not been successful on the Application.

Further, the Tenants acknowledged the tenancy was ongoing until October 20, 2019, acknowledged they did not pay October rent and acknowledged they did not have authority under the *Act* to withhold rent. Therefore, the Landlord was entitled to issue them the Notice pursuant to section 46 of the *Act*.

The request for reimbursement for the filing fee is dismissed without leave to re-apply.

Conclusion

The request for reimbursement for the filing fee is dismissed without leave to re-apply.

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: December 06, 2019

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Residential Tenancy Branch