



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

The tenants filed an Application for Dispute Resolution on December 4, 2019 seeking an order to cancel the 10-Day Notice to End Tenancy (the “10 Day Notice”). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on January 28, 2020. In the conference all hearing I explained the process and provided each party the opportunity to ask questions.

The tenants and landlords, and additionally the property owner attended the hearing, and each was provided the opportunity to present oral testimony during the hearing. The landlords confirmed receipt of the Application for Dispute Resolution, delivered by hand, as well as the documentary evidence presented by the tenants. The landlords did not provide documentary evidence for this hearing.

### Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the 10-Day Notice?

If the tenant is unsuccessful in seeking to cancel the 10 Day Notice, are the landlords entitled to an order of possession pursuant to section 55(4) of the *Act*?

### Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlords and tenants both agreed that there was a tenancy agreement in place, signed anew when presented to the tenants on November 30, 2019. The current rent amount is \$1100.00, payable on the first of each month.

The owner set out the recent history of the management of the rental unit, with the new tenancy agreement in place due to new management on November 8, 2019. The new

agreement did not depart from the verbal rent payment scheme in place with the tenants; however, it made the terms clear in a signed document. At the time of the new tenancy agreement, the tenants were in arrears on a pet deposit in the amount of \$550.00.

The landlords issued the 10 Day Notice for unpaid December 2019 rent; this was affixed to the tenants' door on December 2, 2019. The tenants paid a portion of the December rent on December 7<sup>th</sup> in the amount of \$550.00 cash, with the remaining amounts paid in full by December 13<sup>th</sup>. The full \$1100.00 amount was paid in three installments, as arranged with the tenants. The landlords stated they were "willing to work with [the tenants]" to have the full December amount paid.

The landlords also confirmed that the monthly rent for the month of January 2020 was paid in full, and at the time of this hearing, the tenants had also paid the February 2020 rent. The owner confirmed that the information given to him was that the December rent was paid in full, as reported to him by one of the landlords. The landlords confirmed the accuracy of their records contained in a "receipt list" -- the December rent has been "scratched off" that list.

The tenants submitted the following relevant material:

- A photo of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") dated December 2, 2019, for \$1650.00: \$1100.00 for unpaid rent and \$550.00 for a pet deposit. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacant date of December 12, 2019.
- A photo of the 2-page Proof of Service of the 10 Day Notice that shows the landlords on December 2, 2019 served at 10:18 a.m., attached to the door of the rental unit. This document records that the landlord identified a witness as attending that transaction.

The tenants stated they received the 10 Day Notice as it was taped to the door, and they observed one of the landlords doing so on December 2, 2019. Upon receipt of the 10 Day Notice, the tenants submit the parties came to an agreement to pay the outstanding amounts on specified dates. The tenants gave testimony that they paid the rent for the month of December in full by December 13<sup>th</sup>. The first payment was on December 7<sup>th</sup>, and the third and final payment of the rent was \$350.00.

### Analysis

In the hearing I informed both parties that payment of the pet deposit was not at issue. This was not the reason for service of the 10 Day Notice.

Section 46(1) of the *Act* states 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.

The pet damage deposit is not defined as “rent” within the *Act*. I find the inclusion of this amount listed as part of the amount of rent owing in relation to the 10 Day Notices is not allowed. This does not contribute to ending a tenancy under Section 46.

Section 46(4) of the *Act* states that within 5 days of receiving a Notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I am satisfied that when the landlords issued the 10 Day Notice the tenants owed \$1100.00 in rent. I am satisfied the landlords issued the 10 Day Notice on December 2, and the tenants received it that same day.

I am satisfied from the evidence and testimony that the tenants paid the first portion of rent owing on December 7<sup>th</sup> – this is within 5 days of the receipt of the 10 Day Notice. I accept the tenants’ evidence that the December amount was paid in full – as per agreement – by December 13<sup>th</sup>. The landlords also confirmed that the rent for December 2019 was paid in full; however, they did not state specifically that they wanted to cancel the 10 Day Notice.

The *Act* section 46(5) provides that a tenant is conclusively presumed to accept the end to tenancy in a situation where the landlord has not explicitly stated that they want to end the tenancy. I accept the landlords and tenants reached an agreement with respect to rent payment past the 5-day time limit; however, I find that because the rent was not paid within 5 days of receipt of the 10 Day Notice, the tenants are conclusively presumed to have accepted the end of the tenancy.

Nevertheless, the landlords have accepted rent payments for the following months of January and February 2020. There was no indication in the hearing or from the evidence provided by either party that the landlords have the intention of accepting these payments only for ‘use and occupancy’ of the rental unit. Therefore, in this situation I find the landlords have reinstated the tenancy by accepting rent; therefore, I find the 10 Day Notice should be cancelled.

Conclusion

For the reasons above, I order the 10 Day Notice issued on December 2, 2019 is cancelled and the tenancy remains in full force and effect.

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: February 11, 2020

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Residential Tenancy Branch