



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 46 of the *Residential Tenancy Act* (the “Act”). The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

### Background and Evidence

Neither Party provided any documentary or supporting evidence in relation to unpaid rents or utilities.

The following are agreed or undisputed facts: the tenancy under written agreement started August 15, 2019. Rent of \$1,475.00 is payable on the 15<sup>th</sup> day of each month. On March 24, 2019 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”). On May 8, 2020 the Landlord received \$3,000.00 from the Tenant bringing rents current to April 15, 2020. No receipt was issued for this amount and the Landlord did not communicate with the Tenant about still ending the tenancy despite the collection of rent.

The Landlord states that the Notice sets out unpaid rent of \$1,475.00 due March 16, 2020. The Landlord states that the effective date for moving out of the unit as stated on the Notice is April 3, 2020. The Landlord states that the Notice also sets out unpaid utilities of \$227.07. The Landlord states that the Landlord sent a demand for payment of the outstanding utilities by text. The Landlord does not recall the date of this text. The Tenant states that the Notice sets out unpaid rent of \$739.50 due March 15, 2020. The Tenant states that since the Landlord did not communicate with the Tenant after accepting the \$3,000.00 the Tenant believed that the tenancy was reinstated. The Landlord states that it has no argument to counter a reinstatement of the tenancy.

### Analysis

Section 46(6)(b) of the Act provides that if utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section. Given the Landlord's evidence that the Tenant was only texted on an unknown date about the payment of the utilities I find that the Landlord has not substantiated that the Tenant was given a written demand for the payment of utilities prior to the issuance of the Notice for unpaid utilities. I find therefore that the Notice is not valid to end the tenancy for unpaid utilities.

Section 46(1) of the Act provides that 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. Where a notice to end tenancy is disputed the Landlord carries the burden of proof that the notice is valid. As the Landlord did not provide any supporting evidence of the content of the Notice and given the Tenant's evidence that the Notice sets out unpaid rent of \$739.50 due March 15, 2020, I find on a balance of probabilities that the Landlord has not substantiated that the Notice is valid for unpaid rent of \$1,548.76. Further given the undisputed evidence that the Landlord accepted the Tenant's payment of \$3,000.00 without issuing a receipt indicating that this acceptance was for "use and occupancy

only” and without communicating with the Tenant that it was still seeking an end to the tenancy after collection of this amount, and given the Tenant’s evidence of belief that the tenancy was reinstated because the Landlord did not indicate otherwise, I find on a balance of probabilities that the tenancy has been reinstated. For these reasons I find that the Tenant has substantiated a cancellation of the Notice and the tenancy continues. The Tenant is cautioned that all rents continue to be payable as required under the tenancy agreement while the Tenant occupies the unit.

Conclusion

The Notice is cancelled, and the tenancy continues.

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: May 25, 2020

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Residential Tenancy Branch