



# 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 as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated March 2, 2020 ("10 Day Notice"), and to recover the cost of his \$100.00 Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave him an opportunity to ask questions. During the hearing the Tenant provided his evidence orally and responded my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with these documents by Canada Post registered mail, sent on March 13, 2020. The Tenant provided a Canada Post tracking number as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, which the Tenant confirmed in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

### Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of the Application filing fee?

### Background and Evidence

The Tenant advised that the periodic tenancy began on June 1, 2019, with a monthly rent of \$2,000.00, due on the first day of each month. The Tenant said that he did not pay the Landlord a security or pet damage deposit.

There is no evidence before me from the Landlord to support the merits of the 10 Day Notice.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule of Procedure 6.6 sets out the burden of proof in a hearing:

#### **Rule 6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As a result, I find that the burden of proof in this matter is on the Landlord. As the Landlord did not attend the hearing to present the merits of his case – the validity of the 10 Day Notice – I find that the 10 Day Notice is cancelled, as requested by the Tenant.

Given that the Tenant was successful in his Application, I also award him recovery of the \$100.00 Application filing fee. The Tenant said that he is moving out of the rental unit soon, pursuant to a Two Month Notice to End Tenancy for Landlord's Use, with which he was served by the Landlord. As such, the Tenant I find it unlikely that the Tenant can recover this award with a rent reduction; therefore, I grant the Tenant a monetary order for \$100.00 from the Landlord, pursuant to sections 67 and 72 of the Act.

### Conclusion

The Tenant is successful in his Application to cancel the 10 Day Notice, because the Landlord did not attend the hearing to present the merits of the 10 Day Notice. I also award the Tenant recovery of the \$100.00 Application filing fee from the Landlord in the form of a Monetary Order.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$100.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 08, 2020

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Residential Tenancy Branch