



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Rocky International Investment  
Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDCT, OLC< LRE, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:14 a.m. in order to enable them to call into this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

As the tenant confirmed that they received the 10 Day Notice posted on their door by the landlord on December 2, 2020, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. The tenant gave undisputed sworn testimony supported by written evidence in the form of a Canada Post Tracking Number that they sent the landlord a copy of their dispute resolution hearing package and written

evidence by registered mail on December 15, 2020. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was deemed served with these materials on December 20, 2020, the fifth day after their mailing.

### Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to a monetary award for losses arising out of this tenancy? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

On August 31, 2020, the parties signed a one year fixed term Residential Tenancy Agreement (the Agreement) that is to run from September 1, 2020 until August 31, 2021. Monthly rent is set at \$1,500.00, payable in advance on the first of each month. According to the terms of the Agreement, hydro is the responsibility of the tenant. The tenant has supplied written evidence that they have a separate account for hydro and pay this directly to the service provider.

The landlord's 10 Day Notice identified \$500.00 in rent owing as of December 1, 2020, and a further \$100.00 in hydro.

The tenant's application to cancel the 10 Day Notice submitted on December 5, 2020, included a copy of an etransfer of their payment of the \$500.00 in rent owed as of December 2, 2020. They also maintained that they pay hydro directly and that this should not have been included in the landlord's 10 Day Notice. At the hearing, the tenant said that the landlord attempted to obtain a separate hydro payment from the tenant, but that their Agreement states that hydro is the tenant's responsibility. They said that they pay for their hydro directly to the utility.

The tenant applied for a monetary award of \$223.73. The tenant said that they were really only seeking \$123.73, because they have not paid the \$100.00 for hydro requested in the landlord's 10 Day Notice. Of the remaining amount requested, the tenant said that \$23.73 was designed to compensate the tenant for registered mailing costs, with the remaining \$100.00 for the recovery of their filing fee.

### Analysis

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *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.” Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “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.” If the tenant makes such an application, as occurred in this case, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 10 Day Notice.

Since the landlord did not attend the hearing, nor present any written evidence for consideration, I rely on the tenant’s undisputed sworn testimony and written evidence that they did pay \$500.00 of the \$600.00 identified as owing in the 10 Day Notice. With respect to the remaining \$100.00 for utilities, I allow the tenant’s application to cancel that portion of the 10 Day Notice, as the Agreement specifies that the tenant is responsible for paying their own hydro, which the tenant maintained they have been paying directly to the service provider. Under these circumstances, I allow the tenant’s application to cancel the 10 Day Notice.

I further order that the landlord is not to require the tenant to pay a separate hydro charge to the landlord as long as the tenant continues to pay the service provider for hydro directly.

Since the tenant has been successful in this application, I allow them to recover their \$100.00 filing fee for this application from the landlord. As noted at the hearing, the tenant is responsible for their own mailing costs; the only recovery of hearing related expenses they have incurred are by way of recovering their filing fee from the landlord.

As the tenant made no other requests with respect to their application at this hearing, I make no further orders with respect to this matter.

### Conclusion

The tenant’s application to cancel the 10 Day Notice is allowed. The 10 Day Notice is hereby set aside and of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I further order that the correct monthly rent to be charged by the landlord remains \$1,500.00, until modified in accordance with the *Act*, and that the tenant is responsible for paying for their hydro directly to the service provider.

To give legal effect to the \$100.00 monetary award issued in the tenant's favour, I order the tenant to withhold \$100.00 from a future monthly rent payment.

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: March 01, 2021

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Residential Tenancy Branch