



# 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 Tenants' Application for Dispute Resolution, made on December 18, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a 10 Day Notice for unpaid rent or utilities (the "10 Day Notice") dated December 16, 2020.
- an order granting the return of the filing fee.

The Tenant C.F. attended the hearing at the appointed date and time. No one appeared for the Landlord. The conference call line remained open and was monitored for 12 minutes before the call ended.

The Tenant testified that she served the Application and documentary evidence package to the Landlord on December 18, 2020 via registered mail. The Tenant submitted a copy of the registered mail receipt in support. Based on the oral and written submissions of the Tenant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on December 23, 2020, the fifth day after their registered mailing. The Landlord did not submit documentary evidence in response to the Application.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to an order granting the recovery of the filing fee pursuant to Section 72 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy began on June 1, 2020. Currently, rent in the amount of \$1,235.00 is due to be paid to the Landlord by the first day of each month. The Tenant stated that she paid a security deposit in the amount of \$602.50 to the Landlord. The Tenant provided a copy of the tenancy agreement in support.

The Tenant stated that the Landlord notified her on December 10, 2020 that she had failed to pay rent for September 2020 in the amount of \$1,256.00. The Tenant stated that the parties had agreed to a repayment plan, however, the Landlord still served the Tenant with the 10 Day Notice dated December 16, 2020 with an effective vacancy date of December 26, 2020. The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$1,256.00 which was due on December 1, 2020. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenants had five days to dispute the Notice. The Tenant confirmed having received the notice on December 16, 2020 and disputed the 10 Day Notice within the appropriate timelines.

The Tenant stated that the 10 Day Notice was served to the Tenants in case they did not adhere to the repayment plan. The Tenant stated that the parties agreed that the Tenant would pay half of the outstanding rent to the Landlord before the end of December 2020 and the other half on or before mid January 2021. The Tenant stated that she adhered to the repayment plan, therefore was seeking to cancel the 10 Day Notice and to recover the filing fee paid to make the Application.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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 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. In the matter before me, the Landlord has the onus to prove that the 10 Day Notice is valid. I find that the Landlord was properly served with the Notice of Hearing and failed to attend the hearing to prove the allegation within the Notice.

I accept based on the Tenant's testimony that the parties agreed to a repayment plan which was adhered to by the Tenant. In light of the above, I cancel the 10 Day Notice, dated December 16, 2020. I order the tenancy to continue until ended in accordance with the Act.

As for the Tenant's claim for the return of the filing fee, I find that the Tenant breached Section 26 of the Act when she did not pay rent to the Landlord in September 2020 which resulted in the Landlord serving a 10 Day Notice for unpaid rent. As such, I find that the 10 Day Notice was necessary, therefore, I find that the Tenant is not entitled to the return of the filing fee.

### Conclusion

No one attended the hearing for the Landlord in support of the 10 Day Notice dated December 16, 2020. As such, the 10 Day Notice is cancelled. The tenancy will continue until ended in accordance with the Act.

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 16, 2021

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Residential Tenancy Branch