



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNR, FFT**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:15 a.m. to enable the landlord to call into this teleconference hearing scheduled for 1:30 P.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

Both tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenants testified they sent the landlord the Notice of Dispute Resolution Hearing package via email on July 8, 2022, and that the landlord sent an email back to them confirming receipt. The tenants also provided a copy of a form rtb-51 address for service document indicating the landlord could be served via email. The tenants testified they also sent a second set of evidence to the landlord at the same email address on October 8, 2022. The landlord is deemed served with the Notice of Dispute Resolution Hearing and all evidence three days after being sent via emails in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities be upheld or cancelled?

Can the tenants recover the filing fee?

Background and Evidence

The tenants gave the following undisputed testimony. The tenant DC has been a tenant in the rental unit since 2013 and provided a copy of the original tenancy agreement.

The 2 others named on the tenancy agreement have moved out, but the unit has been occupied by DC and the co-applicant named on the application for dispute resolution, SC, since 2015. Rent is due on the 1<sup>st</sup> day of each month, according to the tenancy agreement.

Both tenants are mariners who are frequently away from the rental unit for months at a time. On August 4, 2021, at 12:34 p.m., the landlord acknowledged that email is the best contact for the tenants. Despite agreeing to service by email, some time in June 2022, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities (the “notice”) by posting a copy of the document to the door of the rental unit. The day the landlord posted to the door is unknown, however the tenants testified that a friend of theirs emailed them a copy of the notice on June 16, 2022.

The tenants believed their rent for the month of June was paid for because they got a regular notice from the landlord’s online payment portal that the rent was submitted. They acknowledge that they understood it meant paid, even though it was apparently not paid for the month of June. Thinking rent had been paid, the tenants flew to another part of the province to work as mariners on June 3<sup>rd</sup> and a flight itinerary for DC was provided as evidence.

On June 16<sup>th</sup>, a friend of the tenants saw the notice of their door and sent them a copy of it by email. On the same day, the tenants made an online payment to the landlord’s payment system and the landlord emailed them the next day to acknowledge receipt of the payment. The tenants have paid rent on time from July onward and obtained email confirmation of the same.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure state that the landlord must prove the reason they wish to end the tenancy when a tenant applies to cancel a notice to end tenancy. The standard of proof is on a balance of probabilities.

The landlord did not attend this hearing to provide any evidence to prove the reasons for ending the tenancy or evidence regarding when they posted the notice to end tenancy to the tenants' door. Based on the undisputed evidence of the tenants, pursuant to section 71, I find the tenants were served with the notice to end tenancy on June 16, 2022, the day their friend sent a photo of the document to them via email.

Section 46(4) states:

**46 Landlord's notice: non-payment of rent**

- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.

The tenants paid the outstanding rent and made an application to dispute the landlord's notice on June 16<sup>th</sup>, the same day they were served with it, in accordance with section 46 of the Act. Consequently, pursuant to section 46(4), I find the notice has no effect as the overdue rent was paid within 5 days of receiving the notice. The notice to end tenancy is cancelled.

The tenants' application was successful, and the filing fee shall be recovered. In accordance with the offsetting provision of section 72 of the Act, the tenants may reduce a single payment of rent due to the landlord by \$100.00 in full satisfaction of the filing fee recovery.

Conclusion

The notice to end tenancy for unpaid rent or utilities is cancelled and of no further force or effect. This tenancy shall continue until it is 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: October 24, 2022

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Residential Tenancy Branch