



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding KEN IMPERIAL VILLA APARTMENT and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, FFT

### Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated date (the "10 Day Notice") pursuant to section 46; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenant and the Landlord's representative KC attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

KC confirmed the Landlord's receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package"). I find the Landlord was served with the NDRP Package in accordance with sections 88 and 89 of the Act. The Landlord did not submit documentary evidence for this hearing.

### Issues to be Decided

1. Is the Tenant entitled to cancel the 10 Day Notice?
2. Is the Tenant entitled to reimbursement of his filing fee?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on November 1, 2019 and is currently month-to-month. Rent is \$1,670.00 due on the first day of each month. The Tenant paid a security deposit of \$825.00.

The Tenant submitted a copy of the 10 Day Notice into evidence. It is signed by an agent on behalf of the Landlord and has an effective date of February 18, 2023. The stated reason for ending the tenancy is that the Tenant has failed to pay rent of \$125.00 due on February 1, 2023. KC confirmed that the \$125.00 consists of a \$50.00 parking fee for each of the months of January and February 2023, plus a \$25.00 late fee.

The Tenant stated that he received a copy of the 10 Day Notice slipped under his door on February 6, 2023.

KC testified that according to the Landlord's records, the Tenant was renting a parking stall for \$50.00 per month. KC explained that in December 2022, the Landlord was told the Tenant had given up the parking spot and had returned the parking fob remote. KC stated that the Landlord did not have a record of the Tenant returning the fob. According to KC, the 10 Day Notice was sent out based on the Landlord's records indicating that they needed to collect parking fees from the Tenant. KC confirmed that the Landlord does not intend to proceed with an eviction and had just wanted to clear up the issue.

The Tenant testified that the parking fob was returned in February 2022 and the parking stall has not been accessed since. The Tenant confirmed that he has paid rent as normal.

KC stated that the Landlord would agree to accept the Tenant's word that the fob has been returned. KC requested for the filing fee to be waived.

## Analysis

### *1. Is the Tenant entitled to cancel the 10 Day Notice?*

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which states:

#### **Form and content of notice to end tenancy**

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) when given by a landlord, be in the approved form.

I have reviewed the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

I find the Tenant was sufficiently served with a copy of the 10 Day Notice on February 6, 2023, pursuant to sections 71(2)(b) and (c) of the Act. I note that slipping a document under the door is not an acceptable method of service under the Act. However, I find the Tenant acknowledged receipt of the 10 Day Notice on February 6, 2023.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. Records of the Residential Tenancy Branch indicate that the Tenant's application was submitted on February 9, 2023. I find the Tenant's application was made within the time limit stipulated under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Based on KC's testimony, I find the Landlord accepts that the Tenant does not owe unpaid fees as alleged in the 10 Day Notice and does not intend to proceed with an eviction.

I further note that "rent" as defined in section 1 of the Act means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include:

- a security deposit
- a pet damage deposit, or
- a fee prescribed under section 97(2)(k) [*regulations in relation to fees*]

Under section 7 of the regulations, a landlord may charge fees for late payment of rent and for services and facilities requested by the tenant, if not required to be provided under the tenancy agreement. I note there is insufficient evidence that the fees indicated on the 10 Day Notice would not have been excluded from the definition of rent under the Act.

As I have found the Landlord does not intend to proceed with the eviction, I order that the One Month Notice be canceled and of no force or effect.

## *2. Is the Tenant entitled to reimbursement of the filing fee?*

The filing fee is a discretionary award given to an applicant who has been successful in their application. In this case, I find it was open to the Landlord to discuss the parking situation with the Tenant without issuing the 10 Day Notice. In contrast, I find the Tenant was not at liberty to simply disregard the 10 Day Notice after he received it, and was required to make this application to ensure that the 10 Day Notice is cancelled. As the 10 Day Notice has been set aside, I grant the Tenant reimbursement of his filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenant to deduct \$100.00 from rent payable to the Landlord for the month of May 2023, or another month of the Tenant's choosing.

Conclusion

The 10 Day Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

The Tenant's claim for reimbursement of the filing fee is granted. Pursuant to section 72(2)(a) of the Act, the Tenant is authorized to recover his filing fee from the Landlord through a one-time deduction of **\$100.00** from rent payable to the Landlord.

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: April 27, 2023

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Residential Tenancy Branch