



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding OAKWYN PROPERTY MANAGEMENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, FFT

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 22, 2019 ("10 Day Notice"), pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 27 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord stated that she is the managing broker for the landlord company named in this application and that she had permission to speak on its behalf at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord stated that she emailed a copy of the landlord's written evidence package to the tenant on the morning of this hearing on June 6, 2019. I notified the landlord that I could not consider the landlord's written evidence package at the hearing or in my decision because email is not permitted under section 88 of the *Act*, and the landlord is required to serve its evidence at least 7 clear days before the hearing date, as per Rule 3.15 of the Residential Tenancy Branch *Rules of Procedure*. The only written evidence that I did consider was a copy of the 10 day Notice, which the tenant failed to provide, and a copy of the parties' written tenancy agreement, which the tenant failed to provide, but signed a copy.

The landlord testified that the tenant was served with the landlord's 10 Day Notice on April 22, 2019, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. The notice indicates an effective move-out date of May 8, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on April 27, 2019, five days after its registered mailing. The tenant indicated that she received the notice on April 24, 2019, by way of registered mail, when she applied to cancel the notice in this application.

### Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

### Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on October 15, 2016. Monthly rent in the current amount of \$2,300.00 is payable on the 15<sup>th</sup> day of each month. Rent was initially \$2,200.00 due on the first of each month, as per the parties' written tenancy agreement. The tenant consented to an increased rent, higher than the allowable *Residential Tenancy Regulation* ("*Regulation*") amount, in October 2017, by way of email, when it was raised from \$2,200.00 to \$2,300.00. The landlord did not provide a copy of this email for this hearing. No Notice of Rent Increase was provided to the tenant by the landlord. A security deposit of \$1,100.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The landlord does not know whether the tenant is still living in the rental unit, as it was last checked in May 2019.

The landlord issued the 10 Day Notice for unpaid rent of \$5,200.00 due on April 15, 2019. The landlord testified that the tenant failed to pay rent of \$800.00 for November 2018, \$2,300.00 for December 2018, \$1,800.00 for January 2019, and \$300.00 for February 2019, totalling \$5,200.00. She stated that the tenant paid rent of \$2,300.00 for each of March and April 2019. She claimed that rent of \$2,300.00 for each month was outstanding for May and June 2019.

The landlord seeks an order of possession based on the 10 Day Notice.

### Analysis

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant was deemed to have received the notice. The tenant was deemed to have received the 10 Day Notice on April 27, 2019, and filed her application to dispute it on April 26, 2019. Therefore, she was within the five day time limit to dispute the 10 Day Notice. However, the tenant did not appear at this hearing to present her submissions.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 46(1) of the *Act* states that the landlords may only end a tenancy if rent is unpaid on any day after the day it is due. This means that the landlord may only issue a 10 Day Notice for valid reasons.

I find that the landlord provided insufficient evidence that the tenant owed \$2,300.00 in monthly rent to the landlord. The landlord did not provide a copy of the emails indicating that the tenant agreed to pay a higher amount of rent than the yearly maximum increase allowed under the *Regulation*. The landlord did not issue a Notice of

Rent Increase to raise the rent. The rent amount indicated in the tenancy agreement was \$2,200.00 due on the 1<sup>st</sup> day of the month, rather than \$2,300.00 due on the 15<sup>th</sup> day of the month. Therefore, I cannot confirm the tenant owed the \$5,200.00 rent amount indicated in the 10 Day Notice, which is based on the rent being \$2,300.00 per month, in order to issue an order of possession to the landlord.

For the above reasons and on a balance of probabilities, I find that the landlord provided insufficient proof of the current rent amount in order to support the 10 Day Notice unpaid rent amount. Therefore, I cannot issue an order of possession to the landlord. This tenancy continues until it is ended in accordance with the *Act*.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord is not entitled to an order of possession.

This tenancy continues 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: June 06, 2019

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Residential Tenancy Branch