



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MT

### Introduction

This application dealt with the tenant's application seeking additional time to file an application to dispute a 10 day Notice to End Tenancy Due to Unpaid Rent.

The tenant appeared and gave affirmed oral testimony. The tenant testified that the landlord was served with notice of this application and hearing when it was served upon the resident manager on January 27, 2011 in person.

The landlord did not appear for the hearing. I proceeded with the hearing in the landlord's absence.

### Issue(s) to be Decided

Can the tenant be provided with additional time to file an application to dispute the 10 day Notice to End Tenancy Due to Unpaid Rent?

### Background and Evidence

This tenancy began on either the 1<sup>st</sup> of June or July 2010 for the monthly rent of \$880.00.

In December 2010 the tenant refused to pay rent monthly rent because she claims that the landlord has failed to complete repairs to the rental unit despite her numerous requests. The tenant believed that if she withheld her rent that the landlord might be compelled to take some action.

The landlord responded by serving the tenant with the 10 day Notice to End Tenancy Due to Unpaid Rent. The tenant did not dispute the notice or pay the outstanding rent owed within 5 days.

The tenant stated that in the months since the landlord has not returned to collect the rent and has not responded to her continued requests to have repairs completed in the

rental unit. The tenant stated that the resident manager will not talk to her and the other landlord who normally collects rent has not returned her phone calls.

The tenant confirmed that she has not paid rent for December 2010, January 2011 and February 2011. The tenant stated that she has all the rent available for the landlord if they start to communicate to her and the landlord completes the repairs to the rental unit.

### Analysis

Section 66(1) of the *Residential Tenancy Act* provides that if the Director may extend a time limit established by this *Act* only in exceptional circumstances. In addition, section 66(2) and (3) provide that a time limit established by a 10 day Notice to End Tenancy Due to Unpaid Rent can only be extended to pay overdue rent if the landlord agrees and if the tenant deducted the amount under the belief it was allowed for emergency repairs. The Director must not extend a time limit to make an application for Dispute Resolution if the effective date of the notice has expired.

In the circumstances before me I accept that the tenant withheld her rent for the purpose of compelling the landlord to complete repairs to the rental unit but she did not withhold rent because she believed it was allowed for emergency repairs as defined by section 33 of the *Act*.

In the absence of any evidence from the landlord I also accept that the tenant has attempted to communicate with the landlord about the situation and that both agents for the landlord have avoided her. Regardless, I am not satisfied that the tenant attempted to pay the outstanding rent owed in December 2010 within the 5 days provide by section 46 of the *Act*.

I find that I must deny the tenant's request for additional time to file an application for Dispute Resolution to dispute the notice to end tenancy because the tenant filed this request after the effective date of the notice. The notice was effective December 20, 2010 at which point the tenancy ended and the tenant was expected to vacate the rental unit. The tenant did not file this application until January 21, 2011.

Therefore, the tenant's application is dismissed without leave to re-apply.

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: February 04, 2011.

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Residential Tenancy Branch