



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution to cancel a 10 day Notice to End Tenancy.

The Tenants and the Landlord's Agent appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

### Issue(s) to be Decided

Are the Tenants entitled to an Order cancelling the 10 day Notice to End Tenancy?

### Background and Evidence

Although no tenancy agreement was provided into evidence, the testimony indicates that this tenancy began on November 1, 2009, on a month to month basis, monthly rent is \$600.00 and a security deposit of \$300.00 was paid on November 1, 2009.

Based upon the Rules of Procedure, the Landlord's Agent proceeded first in the hearing to explain the reason why the Notice to End Tenancy was issued.

The Landlord's Agent testified that he served the Tenants with a 10 day Notice to End Tenancy for Unpaid Rent (the "Notice") on February 1, 2011, in person. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice. The stated effective move out date indicated on the Notice is January 11, 2011.

The Landlord's Agent testified that as of the day the Notice was issued, February 1, 2011, the Tenants owed \$220.00 for January 2011 rent and he believed the Tenants owed \$600.00 for the February 2011 rent.

The Landlord's Agent provided evidence that the Tenants did not make any rent payments within 5 days of receiving the Notice, but made partial payments totalling \$440.00 on February 17, 2011, and had received the balance of the amount owing, \$380.00 on the morning of the hearing.

The Landlord requested an Order of Possession at the hearing.

The Tenants applied to dispute the Notice, but not within the 5 days allowed under the *Residential Tenancy Act* (the "*Act*").

Tenant JL did not dispute the amount of unpaid rent listed on the Notice as of February 2, 2011, but testified that he believed the Notice should be cancelled due to the incorrect effective move out date and due to the fact that the Tenants did not owe the amount of \$820.00 on February 1, 2011, as listed in the Notice, until the next day.

The Tenant acknowledged that \$220.00 remained unpaid for January 2011 rent.

### Analysis

Based on the above testimony, evidence, and on a balance of probabilities, I find as follows:

Under Section 53 of the *Act*, if the effective date listed on a notice to end tenancy does not comply with the *Act*, the date automatically corrects to the earliest date that complies with the *Act*. Thus the effective date on the Notice automatically corrected in this case to February 11, 2011.

The Tenants did not owe the amount of rent listed on the Notice as of the date it was issued, but did owe \$220.00, did not pay the outstanding rent until seventeen days later, and did not apply to dispute the Notice within 5 days. The Tenants are therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord requested an Order of Possession during the hearing. Therefore I find that the Landlord is entitled to an order of possession effective not later than **two (2) days** after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed as the Notice to End Tenancy issued is valid and may be enforced.

The Landlord is granted an Order of Possession.

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 21, 2011.

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Residential Tenancy Branch