



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNE, CNR, OPR, OPB, MNR

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on July 8, 2011 for:

1. An Order cancelling a 1 Month Notice to End Tenancy – Section 48; and
2. An Order cancelling a 10 Day Notice to End Tenancy – Section 46.

The Landlord applied on July 13, 2011 for:

1. An Order of Possession - Section 55; and
2. An Order for unpaid rent or utilities - Section 67.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Tenant confirmed that a Notice to End Tenancy has not been served on the Landlord and that the Tenant’s selection on the application to cancel this Notice was in error and therefore does not form part of the application by the Tenant.

### Issue(s) to be Decided

Are the Notices to End Tenancy valid?

Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord states that the Tenant was employed as a Caretaker in March 2010, that a unit was provided to the Tenant in exchange for the caretaking services and that no rent was payable on the unit. The Landlord states that a Caretaker Agreement for Services was prepared for the Tenants signature and that this agreement provides that each Party shall give the other party 30 days notice should the services be ended. No copy of this agreement was provided as evidence and the Landlord states that since the agreement was never signed by the Tenant, it is not valid. The Landlord states a written notice was provided to the Tenant ending the caretaking services on May 31, 2011 and providing the Tenant with 30 days notice to vacate the unit. The Landlord provided a copy of this notice as evidence.

The Landlord states that upon ending the services, rent on the unit became payable however there is no agreement in place for the amount of rent that becomes payable should the employment end. The Landlord states that the amount of \$1,200.00 was determined to be the monthly rental value of the unit by the previous administration. On July 5, 2011, the Landlord personally served the Tenant with a 10 Day Notice to end Tenancy for non-payment of June 2011 rent in the amount of \$1,200.00.

### Analysis

The relevant parts of Section 48 of the Act provides as follows:

- (1) A landlord may end the tenancy of a person employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part by giving notice to end the tenancy if
  - (a) the rental unit was rented or provided to the tenant for the term of his or her employment,
  - (b) the tenant's employment as a caretaker, manager or superintendent is ended, and
  - (c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.
- (4) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52 of the Act provides as follows:

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, and
- (e) when given by a landlord, be in the approved form.

Paragraph 12 (4) of the Schedule to the Residential Tenancy Regulation requires a landlord to use the approved form available at the Residential Tenancy Branch. As the Landlord did not provide the form or content required by the Act in the notice of May 31, 2011, I find that this notice is not valid and I order it cancelled.

As the Landlord was unable to provide evidence of a lease agreement or rental terms of the unit, and since the Tenant never paid any rent for the unit, it cannot be determined that any amount of rent was payable or that the rent was payable as of June 1, 2011, the day following the end of the Tenant's employment as a caretaker. Accordingly, I find that the 10 day notice to end tenancy for non-payment of June 2011 rent is not valid and I order the notice cancelled. As the tenancy continues and as payable rent has not been established, I find that the Landlord is not entitled to an order of possession or a monetary order for unpaid rent. The Landlord's application is therefore dismissed.

### Conclusion

The notices to end tenancy are cancelled, the tenancy continues and the Landlord's application is dismissed.

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: August 09, 2011.

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Residential Tenancy Branch