



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNR, MNR, MNDC, MNSD, OLC, ERP, RP, PSF, FF

### Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant to cancel a 10 Day Notice to End Tenancy for unpaid rent, more time to make an Application, and a request for a monetary Order for issues related to emergency repairs; repairs to unit, site or property; provide services or facilities; and recover his filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary Issue(s):

The Tenant filed his Application for Dispute Resolution on time, pursuant to the service provisions set out in the Act and Residential Tenancy Policy Guideline. The Tenant indicated several matters of dispute on his Application; however there is a primary issue that is appropriate to deal with during this proceeding, the 10 Day Notice to End Tenancy. The Tenants’ other issues in dispute are not sufficiently related to the primary issue to be dealt with together and at the hearing the Tenant indicated he did not submit his evidence and documentation relating to those other issues with his Application and indicated that he had planned to withdraw those issues at this time. Pursuant to 2.3 of the Rules of Procedure I have determined that it is appropriate to dismiss the Tenant’s unrelated disputes set out on the Application with liberty to reapply.

### Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

### Background and Evidence

I have reviewed the relevant oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant submitted a copy of a 10 Day Notice to End Tenancy in evidence which he confirmed was received on his door from the Landlord on September 17, 2011. The Notice stated that the Tenant must vacate the rental unit by September 30, 2011. The Tenant filed his Application for Dispute Resolution on Monday, September 26, 2011. The Tenant has not vacated the rental unit and has not paid the rent, which is due on the first of each month. The parties agree that rent is owing for August, September, and October.

The Tenant testified that he has been consistently unsatisfied with the Landlord's maintenance and upkeep of the property for the four and half years that he has lived there. The Tenant also indicated that he had made requests of the Landlord in the past to use the property for commercial use for his business, however the Landlord denied him this request and it remained a residential tenancy. The Tenant stated that the property goes by two addresses one using a street name, "C" Avenue, and one where it is a numbered street, "#" Avenue; the Tenant states this is because the City has been trying to change the residential address of the property. The Landlord confirmed that this is a residential tenancy and not a commercial tenancy and stated that either address can be used, but at this time the property is using "#" Avenue.

The Tenant testified that he withheld the rent because he was not satisfied with the maintenance and condition of the rental unit and property and because the property management company had changed and he had difficulty reaching them over the summer, and that he was also recovering from a surgery that he had in July. The Tenant confirmed that he did reach the property manager and that they established communications and discussed the Tenant's requests regarding the rental unit and property before the Notice was issued. The Tenant confirmed that he did not pay the outstanding rent within 5 days of receiving the Notice.

At the hearing the Landlord requested an Order of Possession. The Tenant testified that he is currently packing up and that he will be out of the rental unit within in a day or so.

### Analysis

Based on the documentary evidence and the affirmed testimony of the parties, I find the following: The Tenant was properly served with the 10 Day Notice to End Tenancy on September 17, 2011. The Tenant failed to pay rent for August, September, and October. Pursuant to section 26 of the Act, I find that the Tenant did not have a legal right to withhold rent. The Tenant failed to pay rent within 5 days as required by the Notice; however he has remained in the rental unit. I dismiss the Tenant's Application to cancel the Notice. Upon dismissal of the Tenant's Application, the Landlord made an oral request for an Order of Possession. Pursuant to section 55 of the Act, I must grant this request accordingly, I find that the Landlord is entitled to an Order of Possession.

As the Tenant was not successful in his Application, I decline to award recovery of his filing fee.

### Conclusion

Pursuant to section 55, I find that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme court and enforced as an Order of that court. The Order of Possession accompanies the Landlord's copy of this decision.

I dismiss the Tenant's other issues related to: emergency repairs; repairs to unit, site or property; provide services or facilities and his request for a monetary Order, with liberty to reapply for Dispute Resolution.

I dismiss the Tenant's request for recovery of the filing fee from the Landlord in relation to the Application before me.

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: October 17, 2011.

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Residential Tenancy Branch