



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant requesting that that One Month Notice to End Tenancy for Cause and an amendment to the Application requesting also that the 10 Day Notice for Unpaid Rent be cancelled.

Both parties attended the hearing. The Landlord and the Tenant gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

During the hearing the Landlord requested that an order of possession be granted as soon as possible if the Tenant's Application is dismissed.

### Issue(s) to be Decided

Should the Notices to End Tenancy be cancelled or is the Landlord entitled to an order of possession?

### Background and Evidence

The parties confirmed that the tenancy commenced on May 01, 2008 with rent due on the first of each month. The parties confirmed that the current monthly rent is \$700.00 per month. The Landlord submitted a copy of the written tenancy agreement as part of her evidence package, and the Tenant confirmed that she had received a copy of the Landlord's evidence. The parties confirmed that a security deposit of \$332.50 was paid when the tenancy commenced. The Tenant has not yet moved out of the rental unit.

The Tenant filed her Application for dispute resolution on November 01, 2011, within ten days of the date of receiving the first of the Notices to End Tenancy. The Landlord confirmed that she received a copy of this along with a Notice of Hearing. The parties also confirmed that they had exchanged evidence submissions prior to the hearing.

The parties agree that four notices had been served and received by the Tenant as follows:

-A One Month Notice to End Tenancy for Cause, for repeated late payment of rent and significantly interfering with or unreasonably disturbing another occupant or the landlord, personally served on the Tenant on October 26, 2011.

- A Ten Day Notice to End Tenancy for Unpaid Rent, personally served on the Tenant on October 29, 2011 for \$400.00 rent outstanding since October 01, 2011.
- A Ten Day Notice to End Tenancy for Unpaid Rent, personally served on the Tenant on November 02, 2011, for \$700.00 rent outstanding for November 01, 2011.
- A Ten Day Notice to End Tenancy for Unpaid Rent, posted on the Tenant's door with a witness present, on November 06, 2011 for \$700.00 rent outstanding for November 01, 2011.

As the 10 Day Notices take priority and could affect the term of the tenancy on an earlier date these were dealt with first at the hearing.

The Landlord states that the 10 Day Notice served on the Tenant on October 29, 2011 is no longer in effect as the Tenant paid the \$400.00 outstanding rent for October, within five days of receiving the Notice. The Landlord states that the 10 Day Notice, served on November 02, 2011, is for the outstanding rent of \$700.00 for November. The Landlord states that after receiving the Notice the Tenant responded on November 03, 2011 by providing the Landlord a post-dated cheque for November 15, 2011. The Landlord states that she returned the cheque to the Tenant on November 03, 2011 with a letter indicating that the Tenant must move out by November 12, 2011 or pay the rent by November 07, 2011, which is five days from the date the Notice was served on the Tenant. The Landlord stated that as the Tenant did not pay the rent and did not move out of the unit, the Landlord was concerned that she may try to deny that she received the Notice by personal service, so on November 06, 2011, the Landlord with a witness posted another 10 Day Notice to End the Tenancy on the door of the rental unit. The Landlord stated that as of the date of the hearing the rent for November is still unpaid. The Landlord is seeking an order of possession and wants the Tenant to move out as soon as possible.

The Tenant states that she has been unable to pay the rent as she has lost her job and has had many problems. The Tenant states that she has been having problems due to another tenant in the building, including disturbances to her sleep by the other tenant stomping on the floor above her rental unit late at night. The Tenant wants the Landlord to allow her to stay in the rental unit but pay the rent late. The Tenant stated that she was personally served with the 10 Day Notice on November 02, 2011, and that she responded by providing the Landlord with a post-dated cheque for November 15, 2011 to cover the rent. The Tenant states that if the Landlord had accepted the post-dated rent cheque and cashed it on November 15, 2011, there would have been enough money to cover it on that date. The Tenant states that she does not have any money in her bank account at this time as she has paid her bills. The Tenant confirmed that she had not paid her rent for November at this time and owes the Landlord \$700.00. The Tenant states that she does not want to move out of the rental unit and wants all of the Notices to End Tenancy cancelled.

### Analysis

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

The evidence of both parties confirmed that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on November 02, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally delivered to the Tenant, it was deemed to have been served on November 02, 2011 (the same day). The Tenant did not pay the outstanding rent within five days from the date of service as required by the Notice. The deadline to do so was November 07, 2011. The Landlord correctly indicated that the Tenant had until November 12, 2011 to vacate the premises, as this is ten days from the deemed service date, pursuant to the provisions set out in the Act and the Residential Tenancy Policy Guideline. The Tenant did not vacate the rental unit as required by the Notice.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on November 12, 2011, which is ten days after the effective date of the Notice. As a result I dismiss the Tenant's Application. As the Tenant's Application is dismissed and the Landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

I find that the Landlord is entitled to an order of possession for the rental unit effective two days from the date of service of the order on the Tenant.

As a result of the 10 Day Notice to End Tenancy being valid, and the tenancy ending, I find it is not necessary to deal with the One Month Notice to End Tenancy for Cause.

### Conclusion

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenant. This order must be served on the Tenant and may be filed in Supreme Court.

The order accompanies the Landlord's copy of this decision.

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: November 23, 2011.

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Residential Tenancy Branch