



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel a 10 Day Notice to End Tenancy for unpaid rent and to recover the filing fee from the landlords for the cost of this application.

The tenant, his witness, the landlord and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and the witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Is the tenant entitled to cancel the 10 Day Notice to End Tenancy?

### Background and Evidence

Both parties agree that this month to month tenancy started on October 07, 2011. There was a verbal agreement in place that the tenant would rent this unit for a monthly rent of \$950.00 due on the first day of each month.

The landlord testifies that the tenant failed to pay rent for December, 2011. The tenant was served with a 10 Day Notice to End Tenancy on December 07, 2011. This Notice indicates

that the tenant has five days to pay the outstanding rent of \$950.00 or dispute the Notice or the tenancy will end on December 17, 2011. The landlord's agent testifies that the tenant failed to pay the rent and at the hearing the landlord requests an Order of Possession to take effect as soon as possible.

The tenant testifies that a previous hearing was held to dispute a 10 Day Notice the landlord had issued for November 2011. The tenant states he was successful at that hearing and that 10 Day Notice was cancelled. The tenant states he was ordered to deduct his \$50.00 filing fee from his rent for December, 2011 at that hearing.

The tenant testifies that he attempted to pay his rent to the landlord on December 04, 2011. The tenant explains that he did not pay his rent on December 01, 2011 as he was waiting to receive the Decision from his last hearing to indicate whether or not he had been successful with that claim. He states when he went to pay the landlord the \$900.00 the landlord just shouted at the tenant and told the tenant they had won the previous hearing and the tenant had to move out. The tenant states the landlord refused to take his rent and the tenant then received a 10 Day Notice to End Tenancy three days later. The tenant states he called the landlords other son who was acting as the landlord's agent to talk about this 10 Day Notice but this agent did not call the tenant back.

The tenant testifies that on December 09, 2011 the tenant was driving into the parking lot when the landlord approached him carrying a rake and a broom. The tenant states he again tried to pay the landlord his rent but the landlord shouted at the tenant "die, die, die" and some other things the tenant could not understand. The tenant testifies the landlord again refused to take the tenants rent and the tenant found the landlord to be threatening at that time so he called the police.

The tenant testifies the police came and took a statement from the tenant. The tenant states he does have a file number but he did not include it as evidence. The tenant states the police interviewed the landlord and told the landlord to stay away from the tenant.

The tenant testifies that on December 04, 2011 he had a friend at his unit who witnessed the first altercation with the landlord. The witness testifies that he had gone to the tenants unit and was sitting having a coffee with the tenant when the tenant saw the landlord outside and went to pay his rent. The witness testifies that he did not see the tenant and landlord outside but did hear the conversation between them. The witness testifies that the landlord kept calling the tenant a crook and a liar and would not take the tenants rent when the tenant told the landlord he has the \$900.00 to give him. The witness testifies the tenant came back into his unit and told the witness that the landlord refused to take his rent.

The landlord was given the opportunity to cross examine this witness but declined this opportunity.

The landlord's agent testifies that neither he nor his father were present on December 04, 2011. He states the tenant did not make an attempt to pay his rent. The landlord testifies that the tenant did complain to the police about him but states the tenant made up this accusation and is a liar. The landlord testifies he did not see the tenant on December 09, 2011. The landlord testifies that the police did speak to him and told the landlord the tenant said the landlord had been bothering him. The landlord testifies the police told him that the tenant calls them all the time and not to believe the tenant.

The tenant testifies that he is a security officer and he has to telephone the police on a regular basis in connection with his work. He states if the police had said this to the landlord it would be in connection with his work. The tenant disputes that the police would have told the landlord not to believe the tenant.

The landlord's agent testifies the tenant should have paid his rent by any other means and has failed to do so. The landlord's agent testifies that his brother, the other agent that had dealt with this tenant previously, did not receive a telephone message from the tenant. The landlord's agent testifies his brother went to the rental unit on December 01, 2011 at 1.00 p.m. and December 02, 2011 at 2.00 p.m. to collect the rent but the tenant was not available on these dates.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. When a 10 Day Notice to End Tenancy is served upon a tenant the tenant has five days to either pay the outstanding rent or dispute the Notice. The tenant argues that he made two attempts to pay the rent to the landlord but the landlord refused to accept it. The tenant states therefore that the Notice to End Tenancy should be cancelled.

The landlord argues that the tenant did not attempt to pay the rent and dispute the tenant's witness's testimony that he overheard a conversation between the tenant and landlord on December 04, 2011 concerning rent. The landlord also argues that the tenant could have paid the rent by some other means and failed to do so.

I have considered both parties arguments and refer the parties to Section 26 of the *Act* which states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

It is my decision that the tenant did have a right to deduct \$50.00 from December rent due to a previous decision that ordered the tenant to do so. However the tenant had no right to withhold the balance of rent of \$900.00 and this amount should have been paid on December 01, 2011.

It is the tenant's reasonability to ensure that rent is paid on the day it is due and if the landlord had refused to accept the rent as alleged by the tenant and his witness the tenant could have sent the rent to the landlord by some other means such as registered mail within five days of receiving the 10 Day Notice. The tenant has argued that he never knew who to pay rent to, either the landlord or his son however I find the tenant was aware who the landlord was and had an address for the landlord who lived in the same building as the tenant.

Consequently, I find the tenant failed to pay rent for December, 2011 and as such the tenant's application to cancel the 10 Day Notice is dismissed.

The landlord has orally requested an Order of Possession. As the 10 Day Notice is upheld I find the landlord is entitled to an Order of Possession pursuant to s. 55 (1)(a) of the Act.

Conclusion

The tenant's application is dismissed. The 10 Day Notice to End Tenancy for unpaid rent will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord 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.

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: January 03, 2012.

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Residential Tenancy Branch