



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNR, OPR, MNR, FF

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has applied to set aside the Notice to End Tenancy for Unpaid Rent.

The Tenant stated that he personally served the female Landlord with copies of the Application for Dispute Resolution and Notice of Hearing on January 27, 2012, at which time the female Landlord served him with copies of the Landlord's Application for Dispute Resolution and Notice of Hearing. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

The hearing was scheduled for 2:30 p.m. on this date, it commenced at that time, and it concluded at 2:50 p.m. As the Landlord had not appeared by 2:50 p.m., I find that the Landlord failed to diligently pursue the application and I therefore dismiss the Landlord's Application for Dispute Resolution without leave to reapply.

### Issue(s) to be Decided

The issues to be decided are whether the Notice to End tenancy should be set aside, pursuant to section 46(4) of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Tenant stated that this tenancy began on May 01, 2011; that when the tenancy first began he had a verbal agreement with the Landlord's husband that the rent would be \$100.00; that after that agreement was reached the female Landlord began demanding monthly payments of \$250.00; that he sometimes pays \$200.00 per month and that he sometimes pays \$250.00 per month; and that rent is due on the first day of each month.

The Tenant stated that he paid \$150.00 in rent on December 01, 2011 and that he currently owes rent for January and February of 2012. He stated that he attempted to pay the Landlord \$200.00 in rent for January on December 20, 2012 but she refused to accept that rent payment, as she wanted him to leave. He stated that he has made no offer to pay the rent since he was served with the Ten Day Notice to End Tenancy.

The Tenant stated that on January 17, 2012 the female Landlord personally served him with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of January 27, 2012.

The Tenant stated that he does not recall when he filed his Application for Dispute Resolution in which he applied to set aside this Notice to End Tenancy. The Tenant was advised that Residential Tenancy Branch records show that he filed his Application for Dispute Resolution on January 25, 2012. The Tenant did not dispute this information.

Upon being advised that the Tenant had not applied to set aside the Notice to End Tenancy within the legislated time limits, the Tenant amended his testimony to state that he actually received the Notice to End Tenancy on January 27, 2012.

### Analysis

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Tenant entered into a verbal tenancy agreement with the Landlord.

I find that the Tenant was personally served with the Ten Day Notice to End Tenancy on January 17, 2012. In reaching this conclusion I was heavily influenced by the testimony of the Tenant, who initially declared that he was served the Notice on January 17, 2012. The Ten

I find that the Tenant's amended testimony that he was personally served with the Ten Day Notice to End Tenancy on January 27, 2012 to be completely lacking in credibility. In reaching this conclusion I was heavily influenced by the fact that the Tenant filed an Application for Dispute Resolution seeking to set aside this Notice to End Tenancy on January 26, 2012, which is completely inconsistent with his testimony that he received it on January 27, 2012.

I find that the Tenant's amended testimony that he was served with the Notice to End Tenancy on January 27, 2012 to be completely self serving, as it was not amended until he was told that he has not applied to set aside the Notice to End Tenancy within the legislated time period.

Section 46(5) of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me the Tenant exercised neither of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on January 27, 2012..

### Conclusion

As the Tenant is conclusively presumed to have accepted that this tenancy ended on January 27, 2012, I dismiss his application to set aside the notice to end tenancy.

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 14, 2012.

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Residential Tenancy Branch