



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a Notice to End Tenancy for Unpaid Rent and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and to respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has the Tenant met the burden of proof to have the 10 Day Notice (the Notice) set aside?

### Background and Evidence

The Tenant affirmed that his tenancy agreement began on August 15, 2008 and that his monthly pad rent is due on the first of each month in the amount of \$416.30. He acknowledged receipt of the 10 Day Notice on January 29, 2012 when he found it stuck in his screen door.

The Tenant confirmed he has not made payments towards his pad rental. He advised that he has put his manufactured home up for sale and intends to pay the Landlord as soon as he is able to collect on the sale.

The Landlord noted that in order to have the Notice set aside the Tenant would be required to prove the rent was paid, or the Tenant has an order from a dispute resolution officer giving him permission to keep all or part of the rent, or the Tenant held back part of the rent to cover the cost of emergency repairs, and that in this case the Tenant has admitted that he simply stopped paying rent.

The Landlord requested that I dismiss the Tenant's application and grant him an Order of Possession effective March 15, 2012.

### Analysis

Where a tenant is served a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution.

In this case the Notice was served to the Tenant on January 29, 2012 when it was posted to the Tenant's screen door and the Tenant filed his application to dispute the Notice on the fifth day, February 3, 2012.

After careful consideration of the evidence before me I find there to be insufficient evidence to prove that this Notice should be set aside or cancelled. Rather the evidence supports the Tenant remains in breach of section 20 of the Act which stipulates a tenant must pay rent when it is due under the tenancy agreement. Accordingly I dismiss the Tenant's application.

The Tenant was not successful with his application and therefore must bear the cost to make his application.

Section 48 (1)(a) of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Therefore I approve the Landlord's request for an Order of Possession.

### Conclusion

The Landlord's decision will be accompanied by an Order of Possession effective March 15, 2012. This Order is legally binding and must be served upon the Tenant.

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 24, 2012.

---

Residential Tenancy Branch