



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR

### Preliminary Issues

The Tenant confirmed receipt of two registered mail packages which were sent June 25, 2012 and July 4, 2012. He advised that these packages included the Landlord's application for dispute resolution with file # AAAAAA written at the top, hearing documents with file # BBBBBB, copies of previously issued 10 Day Notices, proof of service documents, the tenancy agreement, and the 10 Day Notice for Unpaid rent issued July 4, 2012.

Upon further clarification the Tenant confirmed that the document titled Landlord's Application for Dispute Resolution, which was received in the first registered mail package, noted above, had a date stamp received by the Residential Tenancy Branch (RTB) of June 25, 2012 and it was signed by the Landlord on the same date.

The Landlord had previously filed an application for an Order of Possession through the Direct Request Process and was issued a file number of #AAAAAA on June 12, 2012. When completing the current application on June 25, 2012, the Landlord mistakenly wrote his previous file number (#AAAAAA) on the form. The application was not amended by RTB staff to display the new file number of #BBBBBB; instead, it was simply matched to the new hearing documents, copied and returned to the Landlord for service to the Tenant.

Upon review of the aforementioned, I find the Tenant was sufficiently served notice of the Landlord's application for dispute resolution on the current file # BBBBBB, despite the clerical oversight of the previous file number being listed at the top of the form. I make this finding, in part because the Tenant had knowledge that this application was filed June 25, 2012, and it was received with the "Notice of A Dispute Resolution Hearing" dated on the same date, June 25, 2012, which listed the new file number.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. 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. Should the Landlord be granted an Order of Possession for unpaid rent?

### Background and Evidence

The parties agreed they entered into a month to month tenancy agreement that began on April 1, 2012. Rent is payable on the first of each month in the amount of \$1,675.00 and on April 1, 2012 the Tenant paid \$830.00 as the security deposit.

The Landlord confirmed there have been four 10 Day Notices issued in total. They were issued and served to the Tenant on July 4, 2012, June 12, 2012, June 1, 2012, and May 22, 2012.

The Tenant confirmed he has not paid anything towards rent for May, June or July 2012 rent and stated that the Landlord owes him money for renovating the bathroom in the rental unit. He argued that he entered into a verbal agreement with the Landlord where he could renovate the bathroom and the Landlord would pay him for his services. He is of the opinion that the Landlord owes him just over \$9,000.00 and therefore he stopped paying his rent.

The Landlord confirms he verbally agreed to allow the Tenant to install a new bath tub and the agreement required the Landlord to pay for the new tub and \$500.00 for the Tenant's labour. The Landlord submitted that he purchased a \$700.00 tub and paid the Tenant the \$500.00.

The Landlord stated that at no time did he agree to have the Tenant's labour deducted from the payment of rent and at no time did he enter into an agreement linked to the tenancy agreement or the payment of rent.

### Analysis

The parties agreed they had some form of a verbal agreement whereby the Tenant would perform work on the bathroom and the Landlord would pay him for his services. The Landlord submitted that at no time was the Tenant's labour connected to the tenancy agreement or the Tenant's requirement to pay rent. Therefore, in the absence of proof to the contrary, I accept that the tenancy agreement is separate from any other contracts for service entered into by the parties. Accordingly, both parties are bound by the tenancy agreement and the *Residential Tenancy Act*.

Contracts for service do not fall within the jurisdiction of the *Residential Tenancy Act*, therefore I declined to make findings pertaining to the contract for service entered into by these parties.

The evidence supports the Tenant has breached section 26 of the Act which stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement. Accordingly, I find the Landlord had valid reasons for issuing the 10 Day Notices.

When a Tenant is issued a 10 Day Notice to end tenancy they have 5 days to pay the rent in full or file to dispute the Notice. The Tenant does not dispute that he has been issued three 10 Day Notices prior to June 25, 2012, and another on July 4, 2012. Nor does he dispute the fact that he has not paid rent for May, June, or July 2012 and has not made application to dispute the first three Notices.

As per the foregoing, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice(s) and must vacate the rental unit to which the notice(s) relates, pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

### Conclusion

The Landlord has been awarded an Order of Possession effective 2 Days Upon service to the Tenant. 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: July 17, 2012.

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Residential Tenancy Branch