



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RP, MNSD, CNR, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), which was dated July 2, 2012, an order requiring the landlord to make repairs, a monetary order for a return of his security deposit and for recovery of the filing fee.

The tenant appeared and gave affirmed testimony.

The tenant testified that he served the landlord with the Application for Dispute Resolution and Notice of Hearing via registered mail on or about July 20, 2012. The tenant supplied the tracking number via testimony.

I find the landlord was served in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present his evidence and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

As a preliminary issue, I have determined that the portion of the tenant's application dealing with a request for orders for the landlord's compliance with the *Act* and repairs and for a monetary order are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for those orders, **with leave to reapply**.

The hearing proceeded only upon the tenant's application to cancel a 10 Day Notice to End Tenancy for unpaid rent, dated July 2, 2012.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee?

### Background and Evidence

During the tenant's testimony, the tenant referred to an order of possession that the landlord had referenced during communication with the tenant. Thereafter a search of the records showed that the landlord had been granted an order of possession for the rental unit with respect to the 10 Day Notice of July 2, 2012, the subject of this dispute. The order of possession, dated July 20, 2012, had been granted to the landlord through the direct request process in a Decision by the Residential Tenancy Branch dated July 20, 2012 and was effective 2 days after service upon the tenant.

### Analysis

As this issue, the 10 Day Notice to End Tenancy for Unpaid Rent dated July 2, 2012, has previously been decided upon by the Decision and Order of Possession issued by another Dispute Resolution Officer ("DRO") on July 20, 2012, I cannot re-decide that issue as I am bound by this earlier Decision, under the legal principle of *res judicata*.

### Conclusion

I therefore dismiss the tenant's application seeking cancellation of the 10 Day Notice to End Tenancy, dated July 2, 2012, without leave to reapply.

As I have dismissed the tenant's application, I also dismiss his request to recover the filing fee.

I dismiss the remaining portions of the tenant's application, with leave to reapply.

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: August 03, 2012.

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Residential Tenancy Branch