



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MT, CNR, OLC, RP, RR

### Introduction

This hearing was convened by way of conference call in repose to the tenants application for more time to cancel a Notice to End Tenancy; to cancel a Notice to End Tenancy for unpaid rent; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; and for an Order for the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other 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.

### Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find the tenant has applied for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; and for an Order for the tenant to reduce rent for repairs, services or facilities agreed upon

but not provided. As these issues are unrelated to the main issues which is to cancel the Notice to End Tenancy, I decline to deal with these issues at the hearing today.

Issue(s) to be Decided

- Is the tenant entitled to more time to cancel a 10 Day Notice to End Tenancy for unpaid rent?
- Is the tenant entitled to have the 10 Day Notice cancelled?

Background and Evidence

The parties agree that this month to month tenancy started on June 01, 2012. Rent for this unit is \$400.00 per month and is due on the first day of each month in advance. The tenant rents a room with shared facilities in a fourplex.

The tenant testifies that he was served with a 10 Day Notice to End Tenancy on July 09, 2012 in person the tenant seeks more time to file this application and testifies that he attempted to file his application on July 13, 2012 but the Residential Tenancy Office was closing so he was told to return the following Monday July 16. The tenant testifies that during the weekend the landlord spoke to the tenant and told the tenant not to worry about the 10 Day Notice. The tenant testifies that the landlord offered the tenant another room while the landlord carried out repairs to the tenant's room. The tenant testifies he agreed to move to the other room but the landlord did not return with the key over the weekend. The tenant testifies that on the Monday July 16, 2012, the landlord's wife and son came to the unit and told the tenant he had to vacate the unit. The tenant testifies he returned to the Residential Tenancy Office on July 18, 2012 and filed his application to cancel the notice.

The landlord's agent testifies that the tenant failed to pay his rent of \$400.00 on the day it was due in July, 2012. The tenant was served on person with a 10 Day Notice to End

Tenancy on July 09, 2012. The landlords agent states the Notice has the dates of June on it in error and all the dates should be amended to July as this was the month the tenants rent was not paid and the tenant would be aware of this. This Notice informs the tenant that he owes \$415.00 due on July 03, 2012. The landlord's agent states the tenant has failed to dispute the notice within five days and has failed to pay the outstanding rent. The landlord's agent testifies that the tenant has now failed to pay rent for August, 2012 and owes \$800.00.

The landlord's agent testifies that the landlord did offer to cancel the 10 Day Notice if the tenant agreed to move to another room so repairs could be made to the tenant's room and if the tenant paid the outstanding rent. The landlord's agent testifies that the tenant failed to cooperate with the landlord so the Notice to End Tenancy was not withdrawn and the tenant was informed he would have to vacate the rental unit.

The landlord's agent requests that the 10 Day Notice to End Tenancy is upheld and the landlord seeks an Order of Possession.

The tenant testifies he could not pay the rent due as he had to pay vet bills for his cat that was taken ill due to conditions in his unit. The tenant testifies that he was not aware he only had five days to file his application for Dispute Resolution to have the 10 day Notice to End Tenancy cancelled. The tenant testifies that he kept trying to resolve this with the landlord but the landlord would hang up when the tenant called the landlord.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

Section 26 of the Act 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.*

The tenant has not shown that he had a right to withhold the rent and agrees he has not paid rent for July and August, 2012.

With regard to the incorrect dates recorded on the 10 Day Notice; I refer the parties to the *Residential Tenancy Act (Act)* s. 53 which states:

**53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Consequently I find it would be reasonable that the tenant would know that the landlord had made an error on the date given on the Notice stating June instead of July as the tenant was aware he had not paid his rent for July and not June, Consequently I find the effective date of the Notice is amended to July 19, 2012.

I further find that the second page of the 10 Day Notice informs the tenant that the tenant has five days to dispute the Notice, if the tenant fails to dispute the Notice within five days the tenant is deemed to have accepted this Notice and must move out of the

rental unit. An error in this notice or an incorrect move out date does not make the Notice invalid.

Even if the tenant had attempted to file his application on Friday July 13, 2012 the tenant did not arrive at the Residential Tenancy Office until the office was closing, the tenant would have therefore been able to return to the office on the following Monday July 15 to file his application. The tenant waited until July 18, 2012 which took the tenant outside the five day deadline. Consequently, the tenant did not file his application to cancel the Notice within the five days and is therefore conclusively presumed to have accepted the Notice.

The tenant's application is therefore dismissed.

Section 55(1) of the Act states:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Consequently as the tenant's application to cancel the Notice is dismissed and the landlord's agent had made an oral request for an Order of Possession I grant the landlords agents request and issue the landlord with an Order of Possession.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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 Respondent 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: August 14, 2012.

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Residential Tenancy Branch