



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

OPR

### **Introduction**

This was an Application for Dispute Resolution by the landlord for an Order of Possession based on a Notice to End Tenancy for Unpaid Rent of July 3, 2012.

Both parties appeared and gave testimony during the conference call.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession based on the 10-Day Notice?

### **Background and Evidence**

The landlord testified that the tenancy started on May 1, 2008 and the current rent is \$365.00. A security deposit of \$182.50 was paid

The landlord testified that the tenant failed to pay \$365.00 rent for the month of July 2012 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued on July 3, 2012 and served on the tenant. The landlord testified that the tenant did not pay any of the arrears and did not vacate the unit.

The landlord testified that an application for dispute resolution was filed seeking an order of possession based on the Ten Day Notice to End Tenancy for Unpaid Rent.

The tenant agreed that he did not pay the rent owed for July, but stated that the landlord had violated the agreement by not providing cable services. The tenant testified that he was withholding the rent, which was in the bank, until the landlord fulfilled his responsibilities under the Act and agreement by restoring services that were part of the tenancy. The tenant stated that he had submitted evidence to defend against the landlord's Ten Day Notice to End Tenancy for Unpaid Rent and was relying on the hearing to dispute the Notice. However, the tenant apparently did not submit his own separate application for dispute resolution to dispute the Ten Day Notice to End Tenancy for Unpaid Rent and no formal application or cross application was filed with the Residential Tenancy Branch by the tenant.

### **Analysis**

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due.

When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. I accept the landlord's testimony that he served the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent on July 3, 2012.

The Act provides that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, to cancel the Notice, or may file an application to dispute the Notice through a dispute resolution hearing. The Ten-day Notice served on the tenant contained information cautioning the tenant against withholding rent. It also provided instructions on page 2 about how and when a tenant may dispute the 10-Day Notice if the tenant objects to the Notice or the landlord's claim. In this case I find that the tenant did not pay the arrears and did not file his own application to dispute the Ten Day Notice to End Tenancy for Unpaid Rent .

I find that section 46(5) of the Act provides that, if a tenant does not pay the rent or make an application for dispute resolution in accordance with the above, then the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date shown on the notice, and must vacate the rental unit by that date.

Based on the above, I find that the landlord is entitled to an Order of Possession.

### **Conclusion**

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 01, 2012.

---

Residential Tenancy Branch