



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CN R, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Notice to End Tenancy for unpaid rent and to recover the filing fee from the landlord for the cost of this application.

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

### Issue(s) to be Decided

Is the tenant entitled to have the Notice to End Tenancy cancelled?

### Background and Evidence

The parties agree that this tenancy started on August 01, 2012. This is a fixed term tenancy which is due to expire on October 31, 2012. Rent for this unit is \$825.00 per month and is due on the first day of each month.

The landlord testifies that the tenant was served a 10 Day Notice to End Tenancy for unpaid rent on September 05, 2012 by posting the Notice to the tenant's door. This

Notice informs the tenant that the tenant owes rent of \$725.00 which was due on September 01, 2012. The tenant must pay the outstanding rent within five days or dispute the notice within five days. If the tenant fails to do so the tenancy will end on September 16, 2012.

The landlord orally requests an Order of Possession at the hearing today effective on October 31, 2012.

The tenant testifies that he disputed the Notice on September 14, 2012. The tenant disputes the amount of rent outstanding.

### Analysis

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

The tenant was served a 10 Day Notice to End Tenancy which was posted on the tenant's door on September 05, 2012. This Notice is therefore deemed to have been served three days later pursuant to s. 90(c) of the Act. Therefore the tenant is deemed to have received the Notice on September 08, 2012. Page two of the Notice informs the tenant that the tenant has five days to either pay the rent or file an application to cancel the Notice. The tenant did not pay the rent and did not file his application until September 14, 2012. Consequently the tenant did not file his application within the five allowable days and the tenant is therefore conclusively presumed to have accepted the end of the tenancy and the tenant's application is therefore dismissed.

The landlord is entitled to request an Order of Possession at the hearing if the tenant's application to cancel the Notice is dismissed. Consequently as the 10 Day Notice is upheld I grant the landlord an Order of Possession effective by 1.00 p.m. on October 31, 2012.

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 by 1.00 p.m. on October 31, 2012. This order must be served on the tenant 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: October 18, 2012.

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Residential Tenancy Branch