



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a 10 Day Notice to End Tenancy for unpaid rent and utilities.

The tenants served the landlord with a copy of the Application and Notice of Hearing. The landlord's agent confirmed receipt of this package. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The landlord's agent and one of the tenants appeared. The parties gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Are the tenants entitled to cancel the Notice to End Tenancy?

### Background and Evidence

Both Parties agree that this tenancy started in June, 2012. The rent for this unit is \$900.00 per month and is due on the first of the month.

The landlord's agent testifies that the tenants failed to pay rent for November leaving an unpaid balance of \$750.00. The tenants were served with a 10 Day Notice to End Tenancy on November 06, 2012 in person. Therefore the tenant had five days from November 06, 2012 to file their application to dispute the landlords 10 Day Notice. The tenants filed their application on November 14, 2012, eight days after being deemed to have received the Notice. The tenants did not apply for more time to cancel the Notice. The landlord testifies that since the Notice was served upon the tenants the tenants have also failed to pay rent for December, 2012.

The landlord orally requests an Order of Possession to take effect as soon as possible.

The tenant attending does not dispute that they owe some rent to the landlord or that December's rent was not paid. The tenant testifies that he could not get to the Residential Tenancy Office to file their application in time as he is on disability.

### Analysis

Section 26 of the *Residential Tenancy Act (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.*

It has been established at the hearing that the tenants do owe rent for November and December, 2012. It has also been established that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. The tenants' application to cancel the Notice is therefore denied.

As the landlord has requested an Order of Possession at this hearing and I find the 10 Day Notice is upheld I grant the landlord an order of possession pursuant to s. 55 of the *Act*.

### Conclusion

The tenant's application is dismissed without leave to reapply. The 10 Day Notice to End Tenancy will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **Two days after serve upon the tenants**. This order must be served on the tenants 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: December 20, 2012.

---

Residential Tenancy Branch