



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, FF

### Introduction

This hearing was originally scheduled for December 4, 2012 to deal with multiple issues identified on a tenant's Application for Dispute Resolution. In the days prior to the originally scheduled hearing the tenant made submissions indicating she wished to dispute a Notice to End Tenancy for Unpaid Rent and a Notice to End Tenancy for Cause although she did not do so procedurally correctly. At the December 4, 2012 hearing both parties appeared and I confirmed that the most important issues to resolve were the Notices to End Tenancy. I amended the tenant's Application for Dispute Resolution to reflect a dispute of the Notices to End Tenancy and severed the remaining issues with leave to reapply.

I also heard that the tenant was not serving her evidence packages to the landlord in a manner that complied with the Act. The landlord also confirmed that her real estate agent does not act on her behalf with respect to this tenancy. I provided the parties instructions with respect to evidence and service requirements and informed that parties that I would adjourn the hearing to permit the parties to properly serve each other and the Branch with evidence relevant to the Notices to End Tenancy.

At the reconvened hearing of January 10, 2013 both parties appeared. I determined that the tenant had not properly served the landlord with the evidence packages she sent to the Branch during the adjourned period despite my previous instructions and I excluded her evidence, with the exception of the Notices to End Tenancy since the landlord also had those Notices in her evidence package.

I was satisfied the landlord had served the tenant with the landlord's evidence package; however, the package served upon the tenant was accompanied by a Notice of Hearing for a hearing set to take place January 17, 2013 under the landlord's application (file no. 802496). Nevertheless, the tenant indicated that she was prepared to respond to the documents and photographs contained in the landlord's evidence package as they related to the Notices to End Tenancy that were under dispute and the tenant wanted this dispute resolved. Therefore, I accepted into evidence the landlord's evidence package.

At the conclusion of this hearing the parties confirmed that the issues scheduled to be dealt with on January 17, 2013 were moot given the outcome of this hearing and that the January 17, 2013 hearing should be cancelled. I have taken steps to cancel the January 17, 2013 hearing.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
3. Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties entered into a tenancy agreement set to commence October 1, 2012 although the tenant was permitted to move-in three days earlier. The tenant paid a security deposit of \$875.00 and a pet deposit of \$875.00. The tenancy agreement provides that the tenant is required to pay rent of \$1,750.00 on the 1<sup>st</sup> day of every month.

The landlord issued two Notices to end Tenancy: a 1 Month Notice to End Tenancy for Cause was mailed to the tenant November 23, 2012 and faxed to the tenant again on November 27, 2012. A 10 Day Notice to End Tenancy for Unpaid Rent was personally served upon the tenant on December 2, 2012. These Notices to End Tenancy were the subject of this hearing.

The 10 Day notice to End Tenancy indicated that the tenant owed \$1,925.00 in rent as of December 1, 2012. The landlord submitted that \$175.00 represented three days of rent for September 2012; however, the landlord acknowledged that there was no agreement for the tenant to pay pro-rated rent when she was provided possession of the rental unit early.

The tenant was of the position the amount on the 10 Day Notice was incorrect, which is why she disputed the Notice. However, the tenant acknowledged she owed \$1,750.00 for rent when she received the 10 Day Notice. The tenant explained that she thought she had 10 days after receiving the Notice to pay the rent she owed for December 2012. She pointed to the 10 Day Notice as her basis for this belief.

It was undisputed that the tenant sent \$1,750.00 to the landlord via email on December 10, 2012. The landlord accepted the monies for "use and occupancy only" in an email sent to the tenant on December 12, 2012 which the tenant acknowledged receiving.

It was undisputed that the tenant has not paid rent for the month of January 2013 and continues to occupy the rental unit. The tenant gave multiple reasons for not paying rent for January and continuing to reside in the rental unit, such as: she had offered to purchase the property; she had made repairs to the property for which she has not been reimbursed; the landlord has not provided move-in photographs of the property to her; and, the landlord has not returned the security deposit or pet deposit to her.

I was confirmed that there is not an accepted offer for the tenant to purchase the property. The landlord responded to the tenant's assertions as follows: the landlord had not requested or otherwise agreed for the tenant to make repairs to the property, the landlord's obligation is to provide the tenant with a move-in inspection report but there is no obligation to provide the tenant with photographs; and, the landlord confirmed she will administer the security deposit and pet deposit in accordance with the Act at the appropriate time.

I explained to the tenant that where a landlord does not administer the security deposit and/or pet deposit in accordance with the Act the tenant has a remedy; however, since the tenant continues to occupy the rental unit and has not yet provided a forwarding address to the landlord in writing, the tenant's request for the return of the deposits is pre-mature.

The tenant indicated that it is her intention to vacate the rental unit by January 31, 2013 if not sooner. The landlord was not willing to wait until January 31, 2012 if the tenant did not pay the equivalent of the monthly rent for January 2013 and requested possession of the rental unit by returned as soon as possible.

### Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. Otherwise the tenant must vacate within 10 days of receiving the Notice. These requirements are provided in section 46 of the Act and are stated on the 10 Day Notice itself.

In this case, I have accepted that the tenant disputed the Notice within five days of receiving the Notice. The basis for her dispute was that the amount appearing on the

Notice was incorrect. An error on a 10 Day Notice does not automatically invalidate the Notice especially if the person receiving the Notice has knowledge as to what the Notice should have read. Tenants are informed that an error on the Notice does not make it invalid on the second page of the Notice. While I find there to be merit in the tenant's position that she did not owe the landlord pro-rated rent of \$175.00, the tenancy agreement requires the tenant to pay rent of \$1,750.00 on the 1<sup>st</sup> day of every month and the tenant acknowledged that she knew she owed rent of \$1,750.00 for December 2012 when she received the 10 Day Notice. Therefore, I find the 10 Day Notice was not invalidated by the incorrect sum of \$1,925.00 appearing on the Notice.

Based upon the landlord's testimony, I find that the landlord did not have the right to seek or include an additional \$175.00 on the 10 day Notice as the parties had not agreed that the tenant would pay pro-rated rent when the tenant was given early possession of the rental unit. It is not uncommon for landlords to permit early occupation of a rental unit to a tenant and the landlord may request pro-rated rent in exchange for that privilege. However, I find it unconscionable to permit early occupancy without indication that pro-rated rent would be charged and then attempt to seek it at a much later date because the tenancy relationship has soured.

Based upon the foregoing, I find that the landlord had an entitlement to receive \$1,750.00 on December 1, 2012 pursuant to the terms of the tenancy agreement and that the tenant was fully aware that she owed the monthly rent of \$1,750.00 when she received the 10 Day Notice on December 2, 2012. Had the tenant satisfied her known obligation to pay \$1,750.00 by December 7, 2012 (5 days after receipt of the 10 Day Notice) I would have cancelled the 10 Day Notice. However, the tenant paid the rent she owed eight days after receiving the 10 Day Notice and I find she did not have a basis under the Act for such a delay.

I am also satisfied that the landlord did not act in such a way as to reinstate the tenancy as evidenced by her filing her own Application for Dispute Resolution seeking an Order of Possession and communicating to the tenant that she was accepting the money for use and occupancy only.

In the above circumstances, I uphold the 10 Day Notice and find that this tenancy has ended for unpaid rent.

The Act provides that where a tenant disputes a Notice to End Tenancy and the tenant's application is dismissed or the Notice is upheld, an Order of Possession will be provided to the landlord where the landlord makes such a request at the hearing. I grant the

landlord's request for possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

As I have found the tenancy ended for unpaid rent I found it unnecessary to consider the validity or merits of the 1 Month Notice.

I dismiss this application to cancel two Notices to End Tenancy and make no award for recovery of the filing fee.

### Conclusion

The Application for Dispute Resolution filed by the tenant was severed and this hearing dealt with two Notices to End Tenancy. The other issues identified on the Application for Dispute Resolution filed by the tenant were dismissed with leave to reapply.

The tenant's requests to cancel the Notices to End Tenancy have been dismissed. With this decision the landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord's application for an Order of Possession and Monetary Order for unpaid rent set for hearing on January 17, 2013 has been cancelled by agreement of the parties during this hearing.

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: January 11, 2013

---

Residential Tenancy Branch

