



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, ERP, LRE, MNDC, OLC, PSF, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 10 Day Notice to End Tenancy for Unpaid rent, issued on May 1, 2013, for a monetary order for compensation under the Act, to have the landlord comply with the Act, to have the landlord make emergency repairs, to have the landlord provided services or facilities required by law, to suspend or set conditions on the landlord's right to enter the rental unit and to allow a tenant to reduce rent for repairs.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. The balance of the tenant's application is dismissed with leave to reapply.

### Preliminary issue

In this case, the tenant filed in evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent, issued on May 1, 2013. The tenant also filed a copy of a 10 Day Notice to End Tenancy for Unpaid rent, issued on May 9, 2013, which the tenant acknowledged he received on May 14, 2013.

At the outset of the hearing the tenant was asked if his intention at today's hearing was to amend his application to include the 10 Day Notice to End Tenancy for Unpaid Rent, issued on May 9, 2013. The tenant stated he did not want his application amended to include this notice and wanted the hearing to be based solely on the notice issued on May 1, 2013.

The tenant was cautioned if there is any future hearing which is based on the 10 Day Notice to End Tenancy for Unpaid Rent, issued on May 9, 2013, that it may be found that the tenant has conclusively presumed to have accepted that the tenancy ends on the effective date of the notice as the notice was not disputed within the required timeline under the Act. A copy of this decision can be used at any future hearing.

Therefore, this hearing proceeded based on the notice issued on May 1, 2013, as filed in the tenant's application.

### Issue to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid rent, issued on May 1, 2013, be cancelled?

### Background and Evidence

Based on the testimony of the tenant, I find that the tenant was served with a notice to end tenancy for non-payment of rent on May 1, 2013, by posting to the door. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The tenant testified that he seeks to have the notice cancelled.

The landlord testified that he issued the notice to end tenancy for non-payment of rent on May 1, 2013, which is the day rent is due. The landlord stated he later discovered that this notice was not valid as it was not issued the day after rent was due. The landlord stated that is the reason he issued the second notice on May 9, 2013.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

In this case, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on May 1, 2013. The landlord admitted that it was issued on the same day rent was due and recognized the notice was not a valid notice at the time it was issued.

Therefore, I find the 10 Day Notice to End Tenancy for Unpaid Rent issued on May 1, 2013, was not issued in accordance with section 46 of the Act. As a result the notice of May 1, 2013, is cancelled and has no force or effect.

### Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent issued on May 1, 2013, is cancelled.

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: May 31, 2013

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Residential Tenancy Branch

