



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, CNL, MNDC, MNR, OLC, OPR, OPC, OPL, FF

### Introduction

The tenant has applied for numerous orders, but principally applies to cancel 3 notices to end the tenancy. The landlord requests an Order of Possession, and a Monetary Order for unpaid rent.

### Issues to Be Decided

- Are any of the Notices to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there rent money due and payable by the tenant to the landlord?

### Background and Evidence

This tenancy began August 1, 2012. It was agreed that the tenancy would be for a fixed term, ending July 31, 2013. Rent is due on the 1<sup>st</sup> day of each month in the amount of \$1,600.00. A security deposit of \$800.00 was paid.

On March 30, 2013, the tenant received a 2 month Notice to End Tenancy, effective May 31, 2013, given on the grounds the landlord or a close family member was going to occupy the premises. Discussions ensued over the fact the fixed term did not end until July 31, and the notice was seeking to end the tenancy prematurely. Discussions also occurred as to any compensation to be paid to the tenant as a result of the notice, and any moving expenses payable to the tenant. The tenant also stopped payment of the April's rent.

On April 17, 2013, the landlord served the tenant a one month notice to end the tenancy (for repeated late payment of rent) and a 10 day notice to end the tenancy for non-payment of April's rent. No further rent was ever paid. The tenant filed a dispute of all 3 notices, and a claim for various compensation from the landlord.

### Analysis

Section 49(8) of the Residential Tenancy Act requires that any dispute of a 2 month notice must be made within 15 days the tenant receives the notice. The tenant's claim is filed after this period. Nevertheless, given that the parties had agreed to a fixed term ending July 31, 2013, the effective end date of the notice cannot be earlier than July 31, 2013. By virtue of Section 53 of the Act, that notice automatically corrects to be effective to end the tenancy July 31, 2013, to coincide with the end of the fixed term.

The more critical issue is the tenant's failure to pay rent. Section 26(1) of the Residential Tenancy Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Residential Tenancy Act or the tenancy agreement. This means the tenant was required to pay her rent on the first day of April, even though the landlord had given the improperly dated 2 month notice. The tenant could have filed an application to dispute the 2 month notice (within the 15 day period), but it was not a legal option for the tenant simply to refuse to pay rent. Any compensation due as a result of the 2 month notice certainly did not apply to the April rent. The landlord was therefore entitled in law to serve the 10 day notice ending this tenancy, for non-payment of April's rent. Upon receipt of that notice, the tenant should have paid the rental arrears within the required 5 day period, in order to have the tenancy continue. The tenant failed to do so.

The 10 day notice is therefore found effective to end this tenancy, and the landlord has established a right to possession. The tenant's claim to cancel the notice is dismissed.

The tenant's claim for compensation from the landlord fails to provide particulars, is not supported by proper documentation or evidence. The monetary claim of the tenant is dismissed.

The landlord has received no rent for April or May, and I accept that the tenant is liable for this lost rental income. The landlord is entitled to an award of \$3,200 representing the rental arrears. Given that the landlord gave the improper 2 month notice, that precipitated this dispute, I decline to award recovery of the landlord's filing fee.

### Conclusion

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective May 31, 2013. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$3,200.00, representing the loss of rental income.

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 17, 2013

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Residential Tenancy Branch

