



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Hyphen Holdings Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, RR

### 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 for an Order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant and landlord attended the conference call hearing, gave sworn testimony. The tenant provided some limited 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 set aside?
- Is the tenant entitled to an Order to allow the tenant to reduce rent?

### Background and Evidence

The parties agree that this month to month tenancy started on February 20, 2011. Rent for this unit is \$550.00 per month and is due on the first day of each month.

The landlord testifies that the tenant failed to pay all the rent due for May, 2013. There was an unpaid balance of \$175.00. The landlord testifies that the tenant was served

with a 10 Day Notice in person on May 09, 2013. This Notice informs the tenant that the sum of \$175.00 is outstanding and the tenant has five days to either pay the outstanding rent, or apply to cancel the Notice or the tenancy will end on May 19, 2013.

The landlord testifies that the tenant did not pay the outstanding rent within the five allowable days; however, the tenant did pay \$550.00 for June's rent and \$175.00 of this was applied to the outstanding rent for May, 2013. The landlord testifies that the tenant was served with another 10 Day Notice to End Tenancy on June 02, 2013 for the outstanding rent of \$175.00.

The landlord orally requests that the Notice is upheld and an Order of Possession granted, effective as soon as possible.

The tenant disputes the landlords claim. The tenant agrees that there was \$175.00 outstanding from May and testifies that this was because the Ministry of Social Services did not pay the landlord the correct rent. The tenant testifies that he is trying to sort this out with the Ministry but they are still looking into it.

The tenant testifies that he did apply to cancel the notice within five days as two days of this period fell on a weekend. The tenant testifies that the landlords did not serve the tenant until Friday May 10, 2013 with the Notice and then the weekend fell and the tenant could not get into see an advocate until Monday May 13, 2013.

The tenant testifies that the landlord has tried to evict the tenant three times this year and the landlord is not dealing with the tenants noisy neighbour, the landlord sent a Gangster to the tenants house to served the 10 Day Notice and this person threatened the tenant. The tenant seeks to have the rent reduced due to the landlord's failure to comply with the *Act*.

The landlord testifies that the tenant was served with the 10 Day Notice by an agent working for the landlord.

The tenant has provided no evidence to support his claim for a rent reduction.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the 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.*

I find the tenant failed to pay the rent of \$175.00 and although the tenant has testified that this was because of an error on the part of the Ministry of Social Services it is still the tenants responsibility to ensure rent is paid.

I further find that the second page of the 10 Day Notice does inform the tenant that the tenant has five days to file an application to cancel the Notice. If the tenant does not either pay the rent or file an application to cancel the Notice within this five day time frame then the tenant is conclusively presumed to have accepted the end of the tenancy and must move from the rental unit on the effective date of the Notice. The tenant argues that he did pay within the five days because he was served with the Notice on May 10, 2013 which fell on a Friday and then had to wait until the following Friday, May 17, 2013 to cancel the Notice. The Act does not allow extra days for a tenant to cancel the Notice unless the Residential Tenancy Office is closed on the fifth day and in that case the tenant would have had until the next business day. However, as this is not the case then I find the tenant did not apply to cancel the Notice within the five allowable days and is presumed to have accepted the end of the tenancy.

A landlord is entitled to orally ask for an Order of Possession at the hearing if the tenant has applied to cancel a Notice to End Tenancy and is unsuccessful. As the landlord has orally requested an Order of Possession and the tenant's application to cancel the

Notice is unsuccessful then an Order of Possession has been issued to the landlord pursuant to s. 55 of the *Residential Tenancy Act*.

With regard to the tenant's application to reduce rent for repairs, services or facilities agreed upon but not provided. I have no evidence before me from the tenant to support this claim therefore this section of the tenants claim is dismissed.

### Conclusion

The tenant's application is dismissed in its entity without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. 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: June 17, 2013

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Residential Tenancy Branch