



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

The tenant applies to cancel a one month Notice to End Tenancy dated July 11, 2013.

At hearing it was agreed that on or about August 2, 2013, after this application was brought, the tenant was served with a 10 day Notice to End Tenancy for unpaid rent. It is agreed that the tenant has not paid the amount demanded in the Notice nor has she applied to cancel the Notice within the five day period allowed by law.

The tenant claims that she was informed by the Residential Tenancy Office that the ten day Notice was somehow not valid because of the pre-existing one month Notice. I cannot agree. The relevant portions of s. 46 of the *Residential Tenancy Act* (the "Act") provide:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may  
(a) pay the overdue rent, in which case the notice has no effect, or  
(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant  
(a) is **conclusively presumed** to have accepted that the tenancy ends on the effective date of the notice, and  
(b) must vacate the rental unit to which the notice relates by that date.

(my emphasis)

Nothing in the *Act* provides for a suspension of a ten day Notice during the life of a one month Notice. The tenant also makes an argument that the amount demanded in the ten day Notice is not correct, but subsection 5(a) leaves me no discretion in the matter. The tenant has not paid the amount demanded nor made an application to dispute the Notice. She is “conclusively presumed” to have accepted the end of the tenancy. That strict wording prevents any debate about what advice she might have received or what her intention was. As a result, this tenancy ended on August 15, 2013, the effective date of the Notice.

The tenant’s application to cancel the one month Notice is therefore redundant and is dismissed.

As the tenancy has ended, the landlord is entitled to an order of possession and had made that verbal request. She has graciously agreed to an order of possession effective September 30, 2013 and I grant that order.

Though this tenancy ended August 15, 2013 as the result of the ten day Notice, the tenant acknowledges she will be responsible to pay “use and occupation” money equivalent to rent up to the end of September.

The landlord agreed at hearing that if she gives the tenant a Notice of Entry for the purpose of showing the premises to prospective tenants or for inspection and if the landlord intends to enter personally, then she will inform the tenant of that fact in the Notice of Entry. The landlord further agrees she will not start showing the premises to prospective tenants until September 2013.

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: August 23, 2013

---

Residential Tenancy Branch

