



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a 10 Day Notice to End Tenancy.

The tenant and landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided 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 cancel the Notice to End Tenancy?

### Background and Evidence

The parties agree that this month to month tenancy started 15 years ago. The tenant testifies that rent has always been an amount over \$300.00 per month due on the first of the month, which varies each month. The landlord's agent disputes this and testifies that rent has been \$400.00 per month at least for the last six to seven years since he has been the landlord's agent. The landlord's agent agrees that there may not have been a written tenancy agreement in place at the start of the tenancy.

The landlord's agent testifies that the tenant owes rent for July, 2013 of \$400.00. The tenant was served in person on July 15, 2013 with a 10 Day Notice to End Tenancy for unpaid rent. This Notice informed the tenant that he had five days to pay the rent or dispute the Notice or the tenancy would end on July 26, 2013. The landlord's agent testifies that the tenant has not paid the rent owed and has also failed to pay rent for August, 2013.

The landlord's agent orally requests an Order of Possession at the hearing to be effective as soon as possible.

The tenant testifies that he cannot remember if he paid rent for July but if he did he did not get a rent receipt. The tenant testifies that he has had no power or sewer and therefore should not have to pay rent. The tenant testifies that the landlord has sold the property but has not given the tenant a Two Month Notice to End Tenancy.

The tenant seeks to have the 10 Day Notice to End Tenancy set aside.

### Analysis

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

The tenant argues that rent is not \$400.00 but is an unspecified amount over \$300.00 which varies each month. The landlord argues that this is not the case and rent has always been \$400.00 for at least the last six or seven years. Neither party has provided any evidence to support their claim concerning how much the rent is, except for a previous decision from a hearing held on July 09, 2013. In that decision the Arbitrator at

that hearing determined from the tenant's evidence, provided for that hearing, that rent was an amount over \$300.00. However, I am here to determine if rent was paid for July, 2013 and not the amount of rent. The tenant has testified that he can't remember if he paid rent and the landlord testifies that no rent has been paid for either July or August.

The tenant also argues that he should not have to pay the rent because he has no power or sewage services however the tenant is responsible to pay rent even if the landlord has not complied with the *Act* in providing essential services. The tenant's recourse would have been to file an application to have essential services restored by requesting an Order for the landlord to comply with the *Act*.

Even if the landlord has made an error on the 10 Day Notice concerning the amount of rent due it does not render the Notice to be invalid. As I have no evidence from the tenant that any rent has been paid for July; I find the tenant's application to cancel the Notice must be dismissed.

I refer the parties to s. 55(1) of the *Act* which states:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

The landlord has orally requested an Order of Possession. Having dismissed the tenants application to set aside the Notice I will grant that Order. The effective date on the Notice to End Tenancy in this matter was July 26, 2013. As that date has now

passed, I will grant an Order of Possession effective two days after service on the tenant.

Conclusion

I HEREBY dismiss the tenant's application to set the 10 Day Notice aside.

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: August 02, 2013

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Residential Tenancy Branch

