



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, ERP, RP

### Introduction

This hearing was convened by way of conference call in response to the tenants application to cancel a Notice to End Tenancy for cause; a Notice to End Tenancy for unpaid rent; for an Order for the landlord to make emergency repairs; and an order for the landlord to make repairs.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party. The tenant testifies that she did not receive the landlord's evidence until August 11, 2013. The landlord must serve evidence to a tenant five clear days before a hearing. Therefore as the landlord did not comply with service of the evidence five days before a hearing the landlords documentary evidence has not been considered.

### Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant's application for to cancel both Notices to End Tenancy and the reminder of the tenants claim is dismissed with leave to reapply.

The landlord has English as a second language and was unable to clearly understand questions put to the landlord or make many of her responses clear. The landlord asked for someone at the Residential Tenancy Branch that could speak Punjabi however I explained to the landlord that the landlord must provide an interpreter if the landlord requires one and this is not the responsibility of the Residential Tenancy Branch. The hearing proceeded after giving the landlord the opportunity to find someone to help her translate. The landlord returned to the call and was unable to provide a translator.

I attempted to explain the proceedings in a manner in which the landlord could understand however the landlords understanding remained limited. The landlord sought to continue with the hearing in an attempt to resolve the issues and evict the tenant.

#### Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?
- Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?

#### Background and Evidence

The parties agree that the tenant originally lived in a different unit and moved to this unit in 2012. The parties disagree about the date the tenant moved into this unit. The landlord testifies that the tenant moved in on September 01, 2012 the tenant testifies that she moved in on February 01, 2012. The parties agree that rent for this unit is \$860.00 due on the first day of each month.

The landlord testifies that the tenant was served a 10 Day Notice. The landlord testifies that this was for cause. The landlord testifies that although this Notice does not indicate that rent is owed the landlord hand wrote on the Notice that the tenant has damaged the property, the tenant gave false information to a prospective buyer and the tenant

engages in illegal activity. The Notice has an effective date of July 13 and is dated July 03, 2013.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy. This Notice provides nine reasons to end the tenancy and has an effective date of August 03, 2013. The landlord testifies that the tenant was served in person with this Notice on July 03, 2013. The landlord testifies that her mother came with the landlord to witness the tenant being served with the Notice.

The landlord testifies that she has provided statements from witnesses who describe many disturbances caused by the tenant. None of these witnesses have been asked to appear at the hearing today. The landlord testifies that some of her other tenants living in close proximity to this tenant have now withheld their rent due to the disturbances from this tenant. The landlord testifies that she needs to evict this tenant in order to get rent from her other tenants.

The tenant disputes the landlords claim that the landlord served the tenant with a One Month Notice to End Tenancy. The tenant testifies that she was served with the first page of the 10 Day Notice. The tenant testifies that she had paid a security deposit to the landlord for the original unit and that security deposit was transferred to the new unit. The tenant testifies that she has a new place to move into on October 15, 2013 if the landlord will return her security deposit so the tenant can apply it to her new accommodation.

The landlord testifies that the tenant's security deposit was dealt with at a hearing held in July, 2012. The tenant's security deposit was awarded to the landlord because the tenant had left the original unit with many broken things. The landlord could not provide the file number for that previous hearing and the tenant disputes the landlords claim.

## Analysis

### **10 Day Notice to End Tenancy for Unpaid Rent**

Section 52 of the *Act* provides for the form and content of a Notice to End Tenancy. Where a landlord wishes to end a tenancy, the landlord must serve the tenant with a Notice to End Tenancy that is in the approved form. Section 52 also requires that in order for a Notice to End Tenancy to be effective, the notice must state the grounds for ending the tenancy.

In this case the landlord served the tenant with a 10 Day Notice for unpaid rent but does not include an amount of outstanding rent. Instead the landlord has hand written reasons on this Notice which refers to reasons a landlord would provide for a One Month Notice. In Order for a Notice to be valid it must be the correct Notice for the reason it is served. The landlord may not serve a tenant with a 10 Day Notice to End Tenancy for cause. This 10 Day Notice is therefore invalid and is hereby cancelled.

### **1 Month Notice to End Tenancy for Cause**

The landlord has testified that the tenant was served with a One Month Notice to End Tenancy for cause. The tenant disputes that the landlord served this Notice upon the tenant as declared by the landlord. The landlord was unable to meet the burden of proof that the tenant was served in accordance with the *Act* and although the landlord testified that her mother witnessed this service the landlord has not asked her mother to attend the hearing to give sworn testimony that service took place on July 03, 2013 in person. Consequently the One Month Notice to End Tenancy is hereby cancelled

## Conclusion

The tenant's applications to cancel the Notices are upheld. The Notices to End Tenancy issued July 03, 2013 are cancelled and the tenancy continues.

The tenant is at liberty to file a new application to deal with the reminder of her claim.

The landlord is at liberty to issue a new One Month Notice to End Tenancy to the tenant and this should be served pursuant to s. 88 of the *Act*.

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 15, 2013

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Residential Tenancy Branch

