



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RP, PSF, LRE, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, and sought an order to cancel a 10 day Notice to End Tenancy for unpaid rent, an order to make repairs, an order to provide services or facilities required by law, to suspend or set conditions on the Landlord's right to access the rental site, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issues

At the start of the hearing, it was explained to the Tenant that not all of her claims might be heard during the hearing, as the most relevant issue of whether or not the tenancy would continue was the most important portion of the Application and the other items might be severed if the tenancy was ending.

### Issue(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled or is it valid?  
Should the Tenant be granted orders on the other requests made?

### Background and Evidence

Based on the testimony of the Agent for the Landlord, I find that the Tenant was served with a 10 Notice to End Tenancy for non-payment of \$620.00 in rent on July 7, 2013, in person.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Tenant applied to cancel the Notice.

The Agent for the Landlord testified that the monthly rent for the rental site is \$600.00, which is due on the first day of the month. The Landlord also included a \$20.00 late payment fee on the Notice to End Tenancy.

The Agent for the Landlord and the Landlord both testified that rent had not been paid for August either.

In reply to the Landlord's evidence, the Tenant testified she had not paid the rent because she has no money to pay it.

### Analysis

I find that the Tenant has not paid all the rent due to the Landlord, and therefore, the 10 day Notice to End Tenancy is valid and should not be cancelled. Under section 20 of the Act, the Tenant could not withhold rent even if the Landlord has breached the Act or the tenancy agreement, unless she had an order from the Residential Tenancy Branch allowing her to do so, or if she had paid for emergency repairs.

I find the Tenant had no order that she could reduce rent and there was no evidence the Tenant had paid for emergency repairs. This leads me to find the Tenant had no authority under the Act to withhold rent from the Landlord.

Therefore, I must dismiss the Application of the Tenant to cancel the Notice to End Tenancy.

Upon dismissing the Application of the Tenant, the Agent for the Landlord orally requested an order of possession for the site. Under section 48 of the Act, I must grant that request.

The effective date of the 10 day Notice to End Tenancy was July 17, 2013, and having found the Tenant has failed to pay all rent when due, I find that the Landlord is entitled to an order of possession effective **two (2) days after service on the Tenant**. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the tenancy is ending, I dismiss the other claims of the Tenant.

The Landlord must apply for a monetary order for the unpaid rent, as I am unable to make a monetary order for the Landlord under the Tenant's Application.

### Conclusion

The Tenant testified she had failed to pay the rent when due because she had no money. Under section 20 of the Act, the Tenant may not withhold rent, even if the Landlord is in breach of the Act or the tenancy agreement, unless she had some authority under the Act to not pay rent. I find there is no evidence before me that the Tenant had lawful authority to withhold the rent.

Upon my dismissal of the Tenant's Application, the Agent for the Landlord requested an order of possession. I must grant that request under section 48 of the Act. The Landlord is granted an order of possession effective two days after service on the Tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 19, 2013

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Residential Tenancy Branch

