



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, CNR, MT, RR, SS, FF

### Introduction

This hearing dealt with cross applications. The tenant applied to cancel a Notice to End Tenancy and more time to do so. The tenant also applied for authorization to reduce rent and an order for substituted service. The landlord applied for an Order of Possession and Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

The tenant indicated the dispute code that corresponds to disputing a 1 Month Notice to End Tenancy for Cause in filing his Application for Dispute Resolution. I determined that the tenant erred in selecting that dispute code as both parties were in agreement that the only Notice to End Tenancy served upon the tenant was a 10 Day Notice to End Tenancy for Unpaid Rent dated August 16, 2013. I amended the tenant's application to reflect the correct dispute code.

The tenant filed and served this Application for Dispute Resolution after the date permitted by the Act but in filing his Application the tenant requested he be permitted more time to file to dispute the Notice to End Tenancy. I noted the tenant did not supply a copy of the 10 Day Notice he wished to dispute. I asked the landlord how many pages of the 10 Day Notice were served upon the tenant. The landlord was unable to answer this question with any certainty. The tenant stated that only the 1<sup>st</sup> page of the 10 Day Notice was served upon him. I noted that the landlord submitted only the 1<sup>st</sup> page of a 10 Day Notice to the Branch. In light of the landlord's uncertainty, the tenant's testimony, and having been provided only the 1<sup>st</sup> page of the 10 Day Notice by the landlord, I found the landlord failed to prove that both pages of the 10 day Notice were served upon the tenant.

The purpose of serving documents under the Act is to notify the person being served of their breach and the action being taken against them. When serving a 10 Day Notice to End Tenancy the landlord must serve the tenant with both pages of the Notice as the second page contains important information with respect to the issuance of the Notice and the tenant's rights and obligations upon receiving such a Notice. Failing to serve both pages of a 10 Day Notice means an invalid and unenforceable Notice to End Tenancy was served upon the tenant.

In the absence of a valid and enforceable 10 Day Notice from the landlord and lack of a copy of any part of a 10 Day Notice for the tenant I find I could proceed to consider either party's request with respect to the matter of unpaid rent and the fate of this tenancy.

As it was not in dispute that the tenant has not paid rent to the landlord for several months the parties were informed that the landlord remains at liberty to serve both pages of a 10 Day Notice upon the tenant to include all unpaid rent to date.

With respect to the tenant's request for substituted service the tenant explained that he has been unsuccessful serving the landlord at the landlord's residence. The tenant acknowledged that there is a service address for the landlord on the 1<sup>st</sup> page of 10 Day Notice he was served. That same address appears on the landlord's Application for Dispute Resolution. I heard the address that the landlord uses for a service address is that of his secretary who is responsible for managing the paperwork for this tenancy. I determined that the tenant was able to serve the landlord with his Application for Dispute Resolution at the subject service address by leaving it in the mailbox at that address. I was satisfied that the address provided to the tenant is the landlord's address for carrying on business as a landlord. As such, I was satisfied the tenant is in possession of a service address for the landlord that meets the requirements of the Act and I make no order for substituted service. The tenant is to use the service address he has been provided by the landlord to serve the landlord until such time the landlord changes the address and notifies the tenant in writing of any such change.

The tenant also requested authorization to reduce future rent payable due to repairs, services or facilities agreed upon but not provided. I did not proceed to consider this request as I found the matter not sufficiently related to the primary dispute which was service of a valid and enforceable 10 Day Notice. Therefore, pursuant to Rule 2.3 of the Rules of Procedure, I have dismissed this portion of the tenant's Application with leave to reapply.

As explained to the tenant during the hearing, if the tenant is need of repairs or services or facilities, it is expected that the tenant request repairs be made by the landlord or that the landlord provide services or facilities to the tenant, in writing, prior to filing an Application for Dispute Resolution.

During the hearing, both parties were strongly encouraged to familiarize themselves with their respective rights and obligations under the Act.

### Conclusion

As neither party provided evidence that a valid and enforceable 10 Day Notice was served upon the tenant I did not grant the tenant's request to cancel a 10 Day Notice and I did not grant the landlord's request for an Order of Possession or Monetary Order for unpaid rent. The landlord remains at liberty to serve both pages of another 10 Day Notice upon the tenant to include all unpaid rent to date.

The tenant's request for substituted service has been dismissed.

The tenant's request for a rent reduction has been dismissed with leave to reapply.

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: October 08, 2013

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Residential Tenancy Branch

