



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION and REVIEW HEARING DECISION**

Dispute Codes      MT, CNR, OPR

### Introduction

A hearing was scheduled for 11:00 a.m. on this date to deal with the Tenant's Application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent served upon her on September 11, 2013 and more time to make the Application.

A review hearing was also ordered and set for this time to determine whether the decision and Order of Possession provided to the landlord on September 30, 2013 should be confirmed, varied or set aside. The landlord appeared at the hearing but the tenant did not.

As the tenant failed to appear at the hearing to present a basis for cancellation of the 10 Day Notice served upon her on September 11, 2013, I dismissed Tenant's Application for Dispute Resolution without leave to reapply.

### Issue(s) to be Decided

Should the decision and Order of Possession dated September 30, 2013 be confirmed, varied or set aside?

### Background and Evidence

The parties entered into a one-year fixed term tenancy agreement set to commence May 1, 2013 at the monthly rent of \$1,700.00 payable on the 1<sup>st</sup> day of every.

Both the landlord and the tenant provided a copy of the same 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) with their respective Applications. The Notice is dated September 11, 2013 and indicates rent of \$6,800.00 was outstanding as of September 1, 2013. The Notice indicates that it was served upon the tenant in person and has a stated effective date of September 21, 2013.

The landlord testified that the tenant remains in possession of the rental unit and did not pay the outstanding rent as indicated on the 10 Day Notice or make any other payments to the landlord subsequent to the issuance of the 10 Day Notice.

### Analysis

Under section 26 of the Act a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right under the Act to withhold rent. I was not provided any evidence to suggest the tenant had a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the undisputed evidence before me that the tenant was personally served with a 10 Day Notice to End Tenancy on September 11, 2013. Since the tenant did not pay the outstanding rent and her request to cancel the Notice has been dismissed by way of this decision, I find the tenancy has ended. Accordingly, I find the landlord entitled to an Order of Possession.

Pursuant to section 82(2) of the Act, I confirm the decision and Order of Possession issued September 30, 2013. As such, the landlord may enforce the Order of Possession two days after serving it upon the tenant.

### Conclusion

The Tenant's Application to cancel a 10 Day Notice issued September 11, 2013 has been dismissed. The decision and Order of Possession issued to the landlord on September 30, 2013 are confirmed. As such, the landlord is at liberty to enforce the Order of Possession two days after service upon the tenant.

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 31, 2013

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Residential Tenancy Branch

