

# **Dispute Resolution Services**

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Residential Tenancy Branch
Office of Housing and Construction Standards

### **DECISION**

<u>Dispute Codes</u> CNC, OPR, MNR, MNSD, MNDC, FF

#### <u>Introduction</u>

In the first application the tenant seeks to cancel a one month Notice to End Tenancy received September 9, 2013.

In the second application the landlords seek an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent and a monetary award for unpaid September rent and loss of October rental income.

The tenant does not dispute that she has not paid the September rent nor any money for October.

#### Issue(s) to be Decided

Has the ten day Notice ended the tenancy?

#### Background and Evidence

The rental unit is a bachelor apartment in a house containing ten rental units. The tenancy started in June of this year for a one year term at a monthly rent of \$875.00. The landlords hold a \$437.50 security deposit and a \$437.50 pet damage deposit.

On September 9, 2013 the landlord Ms. M. attached a one month Notice to End Tenancy for cause to the tenant's door. Shortly afterward the landlord realized it was the wrong Notice and re-attended at the tenant's door and attached a ten day Notice to End Tenancy for unpaid rent. The one month Notice had by then been removed. The landlord Ms. M. testified that the tenant was home.

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The tenant testified that she thought the second Notice, the Notice for unpaid rent, was a flyer or advertisement and did not pay it much attention. In response, the attending landlord states that the unpaid rent Notice had been taped to the door right by the keyhole and could not be confused with a flyer or advertisement.

The tenant claims that the ten day Notice she received is different from the Notice the landlords have filed in support of their application. The attending landlord states that she hand copied her copy of Notice she served and so it is different.

#### <u>Analysis</u>

It is apparent that the tenant received the ten day Notice. She filed a copy of it.

It is unlikely that the landlords would attach the one month Notice to the door on September 9<sup>th</sup> but merely toss the second Notice, the ten day Notice for unpaid rent, onto some flyers on the floor in front of the door. I find the landlords duly served the tenant with the ten day Notice by attaching it to the tenant's door on September 9<sup>th</sup>. By operation of s. 90 of the *Residential Tenancy Act* (the "*Act*") the Notice was deemed to have been received by the tenant three days later; on September 12<sup>th</sup>.

The fact that the landlords filed a handwritten copy of the Notice is inconsequential as it does not vary from the tenant's copy in any material particular and is not calculated to deceive.

It is possible that the tenant, having just received a one month Notice the same day did not give the ten day Notice the attention it warranted. In my view that is not something a landlord has control over. The tenant like any other person is responsible for determining the importance of any document she receives.

I find that the ten day Notice to End Tenancy was duly served on the tenant and that the tenant did not either pay the amount demanded in the Notice or apply to cancel it within the five day period allowed or at all. As a result, by operation of s. 47 of the *Act*, this tenancy ended on September 22, 2013 and the landlords are entitled to an order of possession.

The landlords are also entitled to recover the unpaid September rent of \$875.00 and \$875.00 for loss of October rental income.

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## Conclusion

The landlords will have an order of possession.

I grant the landlords a monetary award of \$1750.00 plus the \$50.00 filing fee. I authorize the landlords to retain the \$437.50 security deposit and \$437.50 pet damage deposit in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$925.00

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 07, 2013

Residential Tenancy Branch