



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Associated Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OPT

### Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for unpaid rent and for an Order of Possession of the rental unit for the tenant. The tenant withdrew his application for an Order of Possession.

The tenant, the landlord and the landlord's agent attended the conference call hearing and gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy?

### Background and Evidence

The tenant testifies that he was served with a 10 Day Notice to End Tenancy on September 07, 2013 by the landlord. However the tenant has failed to provided a copy of this Notice in evidence.

The landlord agrees that they did serve the tenant with a 10 Day Notice to End Tenancy which was mailed to the tenant to September 07, 2013. However the landlord has failed to provide a copy of this Notice in evidence. The landlord testifies that the tenant has now paid all the outstanding rent. \$700.00 was paid on September 03, 2013 and \$1,400.00 was paid on September 20, 2013 after the five allowable days once the tenant was deemed served with the 10 Day Notice.

### Analysis

In this matter, the landlord has the burden of proof and must show that a Notice was served upon the tenant; which day the notice was served; and that any rent payments made by the tenant after the five allowable days as indicated on the Notice were accepted by the landlord for use and occupancy only. This means that if the landlord does not provide a copy of the Notice in evidence to satisfy the burden of proof; or a copy of the Notice to determine if it is a legal and valid Notice; and no other evidence to show that the rent payments were accepted for use and occupancy and that the landlord did not reinstate the tenancy; then I cannot uphold the Notice.

Therefore, I find that as I have no evidence before me from the parties to show that a valid and legal Notice was served upon the tenant or that the landlord has not reinstated the tenancy by accepting rent from the tenant. I must uphold the tenant's application.

### Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent is cancelled and the tenancy will continue.

The landlords are at liberty to serve the tenant with another 10 Day Notice to End tenancy if any further rent remains unpaid.

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 29, 2013

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Residential Tenancy Branch

