



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, ERP, RP, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order to have the landlord make repairs and emergency repairs and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord. The tenant had arranged for a witness to be available but the witness was not called to provide testimony.

Residential Tenancy Branch Rule of Procedure 2.3 states that an Arbitrator may dismiss unrelated disputes that are contained in a single application. As the tenant has applied to cancel a notice to end tenancy and a number of the orders sought that would be required only if the tenancy continued and a monetary claim, I find that the additional orders sought by the tenant are unrelated to the issue of the notice to end tenancy.

As such, I dismiss the portion of the tenant's Application seeking orders for repairs and emergency repairs; for a monetary order, with leave to reapply at a future date.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in his Application.

### Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began on November 1, 2013 as a month to month tenancy for the monthly rent of \$750.00 due on the 1<sup>st</sup> of each month. No written tenancy was provided into evidence. The tenant submits that he paid a security deposit of \$375.00 cash to the landlord and a pet damage deposit of \$187.50. The landlord submits the tenant has only paid a security deposit of \$187.50.

The landlord testified the tenant had incurred a large hydro bill of \$514.00 that he demanded payment for on February 28, 2014 and that the tenant failed to pay the full rent for the month of February 2014 and no rent for the month of March 2014.

The tenant submits that he felt he did not have to pay rent because the landlord had taken away some heaters from the rental unit and because the landlord had failed to make repairs and provide heat for the unit as was advertised. The tenant acknowledges that he only paid \$600.00 for rent in February 2014 and did not pay any rent for March 2014.

### Analysis

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Based on the tenant's testimony I find that he did not have authority under the *Act* to withhold any payment of rent.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

While I accept the tenant filed his Application within 5 days of receipt of the Notice I had found the tenant had no authority under the Act to withhold rent from the landlord. As such, I find the tenant was required to pay the amount of rent owing to the landlord within 5 days of receiving the Notice. As the tenant did not pay the rent owing I find the 10 Day Notice to End Tenancy for Unpaid Rent issued on March 9, 2014 is effective.

### Conclusion

Based on the above, I order the tenant must vacate the rental unit in accordance with the 10 Day Notice to End Tenancy issued on March 9, 2014.

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: March 31, 2014

---

Residential Tenancy Branch

