



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR MNR MNDC ERP RP RPP LRE FF

### Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant's request to set aside or cancel the Landlord's Notice to End Tenancy issued for unpaid rent and I dismiss the balance of the Tenant's claim with leave to re-apply.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 4, 2013, by the Tenant to cancel the 10 Day Notice issued for unpaid rent.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Should the 10 Day Notice to end tenancy be set aside or upheld?

### Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on June 1, 2010 and switched to a month to month tenancy after one year. Rent began at \$2,050.00 and was subsequently increased to \$2,128.00 payable on the first of each month. The Tenant paid \$1,025.00 as the security deposit on or before June 1, 2010.

The Tenant submitted undisputed evidence that the Landlord issued a 10 Day Notice to end tenancy and posted it to the Tenant's door on April 1, 2014, seeking \$2,128.00 for the unpaid April 1<sup>st</sup> rent. The Tenant argued that the Notice was not valid as it was issued and served on April 1, 2014 for rent that was due April 1, 2014.

The parties engaged in a discussion for approximately sixty minutes in attempts to settle all the matters brought forth by the Tenant. Unfortunately the parties were not able to reach agreement on the value of the work the Tenant had completed at the rental property so they were not able to settle the matters.

Access to the rental unit was raised by the Landlord as being in dispute which he claimed restricted his ability to assess the value of the work performed. As this matter was convened to hear the matters pertaining to the Tenant's application and not the Landlord's application, I advised both parties that I would only be making a determination based on the validity of the 10 Day Notice.

In closing, both parties were advised of the access provisions provided in section 29 of the Act (as copied at the end of this decision) and they were advised how to contact the Residential Tenancy Branch if they had any further questions or concerns.

### Analysis

After careful consideration of the foregoing and documentary evidence, on a balance of probabilities, I find as follows:

The undisputed evidence was that the Landlord issued, signed, and served the Tenant a 10 Day Notice to End Tenancy on April 1, 2014, for \$2,128.00 of rent that was payable on April 1, 2014.

Based on the above, I find that the 10 Day Notice issued by the Landlord does not meet the form and content requirements of section 52 of the Act because at the time the 10 Day Notice was issued and served, the April 2014 rent was not late. If rent is payable on the first of each month it is not late unless it remains unpaid as of second day of the month. Accordingly, I uphold the Tenant's application to set aside or cancel the 10 Day Notice issued April 1, 2014. If rent remains unpaid the Landlord is at liberty to issue another 10 Day Notice to end tenancy.

The Tenant has been successful with his application; therefore I award recovery of the **\$50.00** filing fee

#### Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent dated April 1, 2014, is invalid and is without force or effect.

The Tenant may deduct the one time award of the \$50.00 filing fee from his next rent payment as full recovery of his filing fee.

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: May 30, 2014

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Residential Tenancy Branch

**Section 29 of the Residential Tenancy Act:**

**Landlord's right to enter rental unit restricted**

(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

