



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gramercy Enterprises Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      For the tenant: CNC, CNR  
For the landlord: MNSD, MNR, FF

### Introduction

This hearing was convened as the result of the applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and an order cancelling the landlord’s 1 Month Notice to End Tenancy for Cause.

The landlord applied for authority to retain the tenant’s security deposit, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

At the beginning of the hearing, neither party raised any issue regarding the service of the other’s application or evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Preliminary and Procedural Matters

Section 5.1 of the Rules allow a respondent to file an application for dispute resolution in response to a related application, and it is termed a cross application. In this case, the tenant filed her application for dispute resolution on June 5, 2014, seeking

cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and on June 16, the tenant amended her application and sought cancellation of a 1 Month Notice to End Tenancy for Cause.

On June 20, 2014, the landlord filed their application seeking a monetary order for unpaid rent and for authority to retain the tenant's security deposit, but did not seek an order of possession for the rental unit based upon their 10 Day Notice or their 1 Month Notice.

I do not find the landlord's application to be sufficiently related to the primary issue listed in the tenant's application, and that is whether this tenancy would continue.

I therefore find that the landlord's application was not a cross application as contemplated and defined in the Rules, was improperly added as a cross application, and I therefore dismiss their application, **with leave to reapply**.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

#### Background and Evidence

The undisputed evidence shows that this tenancy began on April 7, 2014, monthly rent is \$875, and that the tenant paid a security deposit of \$437.50. There was some dispute as to whether or not the tenant paid a pet damage deposit.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord submitted that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on June 11, 2014 by attaching it to the tenants' door, listing unpaid rent of \$784.50 as of June 1, 2014. The effective move-out date listed was June 21, 2014.

The landlord asserted that since the issuance of the Notice, they have received no rent payments from the tenant and that she owes rent for June and July 2014.

The landlord referred to a tenant ledger sheet submitted into evidence showing the payments received during the tenancy.

*Tenant's response-*

The tenant claimed that the landlord had been paid rent in full through payments from a government agency paying a rent subsidy for disability. The tenant submitted that she was unable to prove that payments were sent to the landlord, as she has been locked out of her rental unit by the landlord.

The tenant submitted that if she was allowed access to the rental unit, she could obtain the records.

The tenant confirmed not having attempted to obtain duplicate records from that Ministry responsible for paying the tenant's disability.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice within business five days.

In the case before me, I find the landlord submitted sufficient oral and documentary evidence that the tenant owed the landlord rent when the Notice was issued and that she did not pay all of the rent owed to the landlord within five days of receiving the Notice. I also find that the tenant did not have a legal right to withhold rent.

I must note that while I do not agree with the amount listed by the landlord on their Notice as unpaid rent, I do find that the tenant owed some rent for June and additionally, has not paid the rent for July.

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the 10 Day Notice to End Tenancy issued by the landlord has been supported by the landlord and is therefore valid and enforceable.

As I have determined that the 10 Day Notice is valid, it was no longer necessary for me to consider the tenant's request to cancel the 1 Month Notice.

As the landlord did not request an order of possession for the rental unit at the hearing, I have not granted them such an order. I must note that the evidence showed that the landlord has changed the locks to the rental unit, and therefore has re-taken possession.

The parties at the hearing agreed to dates and times for the tenant to collect her remaining personal property.

### Conclusion

The tenant's application is dismissed, without leave to reapply.

The landlord's application is dismissed, with leave to reapply, for the reasons stated above.

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: July 24, 2014

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Residential Tenancy Branch

