



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MT, ERP, RP, RR

### Introduction

This hearing was scheduled to deal with a tenant's request to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and more time to dispute the Notice; as well as, orders for repairs and authorization to reduce future rent payable for repairs not provided. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

A tenant who receives a 10 Day Notice to End Tenancy has five days to file an application to dispute it. Under section 66 of the Act, an extension of time may be granted in exceptional circumstances. In this case, the tenant received a 10 Day Notice on July 9, 2014 and completed the application process on July 15, 2014 which is six days after receiving the Notice.

The tenant submitted that he was unable to complete the application process within five days of receiving the 10 Day Notice because he was working. The landlord doubted the tenant's submission as she observed that he was home most days. Nevertheless, the landlord was prepared to deal with the matters under dispute and I granted the tenant's request for an extension in these circumstances.

On another matter, the landlord had provided the Residential Tenancy Branch with a written submission in response to the tenant's claims. The landlord testified that the written submission was given to an occupant who resides with the tenant. The tenant denied receiving it. I excluded the written submission from further consideration but permitted the landlord to provide her position verbally during the hearing.

The landlord also orally requested an Order of Possession during the hearing, to be effective September 30, 2014.

Issue(s) to be Decided

1. Should the 10 Day Notice to End tenancy for Unpaid Rent be upheld or cancelled?
2. Is it necessary to issue repair orders to the landlord?
3. Is the tenant entitled to a reduction of future rent payable?
4. Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant is required to pay rent of \$755.00 on the 1<sup>st</sup> day of every month. The tenant paid \$100.00 toward rent owed for June 2014 and nothing since then. On July 9, 2014 the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) indicating rent of \$1,410.00 was outstanding for June and July 2014. The Notice has an effective date of July 19, 2014. The tenant did not pay the outstanding rent and continues to occupy the rental unit.

The tenant submitted that he withheld rent from the landlord because his unit and the building are infested with bed bugs, mice, and there is a problem with mould.

The tenant acknowledged that the landlord did not authorize him to withhold any rent and he did not seek the Director's authorization to withhold rent prior to doing so.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right to withhold rent. The Act provides very limited circumstances when a tenant may legally withhold rent. The need for repairs or pest treatments is not a basis under the Act to withhold rent unless the tenant has received prior authorization from the landlord or an Arbitrator. The tenant acknowledged he did not obtain such authorization before he withheld rent; thus, he was required to pay the rent that was payable to the landlord in accordance with his tenancy agreement and the Act.

Since the tenant did not pay the outstanding rent and did not present a legal basis for withholding rent, I uphold the Notice and dismiss the tenant's request to cancel it. Based upon the Notice, I find the tenancy ended on July 19, 2014 and the landlord is entitled to regain possession of the rental unit.

Section 55 of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a Notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

I find all of the criteria of section 55 have been met and I grant the landlord's oral request for an Order of Possession to be effective September 30, 2014.

Since the tenancy has ended I find it unnecessary to further consider the tenant's request for repair orders and a reduction of future rent payable.

#### Conclusion

The tenant's application has been dismissed and the landlord has been provided an Order of Possession effective at 1:00 p.m. on September 30, 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: September 16, 2014

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Residential Tenancy Branch

