



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Parkside Estates  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Notice to End Tenancy for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; Other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenant, an agent for the tenant, and two agents for the landlord 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. The landlord's agent confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant's

application to cancel the Notice to End Tenancy for unpaid rent and I will not deal with the remaining section of the tenant's claim at this hearing.

Issue(s) to be Decided

Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?

Background and Evidence

The parties agreed that this month to month tenancy started around August 2006. Rent for this unit is now \$735.84 per month and is due on the first of each month.

SA testified that the tenant failed to pay rent for December, 2014 of \$735.84. The tenant was served with a 10 Day Notice to End Tenancy for unpaid rent (The Notice) by posting the Notice to the tenant's door on December 10, 2014. The Notice informed the tenant that the tenant had five days to pay the rent or dispute the Notice or the tenancy would end on December 20, 2014. SA testified that the tenant agreed they had put a stop payment on the December rent cheque.

SA orally requested an Order of Possession of the rental unit effective two days after service upon the tenant.

DM gave testimony on behalf of the tenant and testified that due to a previous hearing with the landlord in which the tenant was successful the tenant anticipated the landlord's actions in attempting to evict the tenant. The tenant therefore took digital evidence showing that the rent cheques for October, November and December were all placed in an express post envelope and sent by registered mail to the landlord in September, 2014. DM testified that the tenant has also provided documentary evidence showing that the rent cheques for October and November were cashed by the landlord and therefore the landlord must have received the registered mail containing the three cheques.

DM testified that the tenant contacted the landlord about the December rent cheque and was told on a voice message and by text message that the landlord wanted the tenant to move out as they don't have a good relationship due to a previous arbitration and that the landlord does not want the tenant's rent. DM testified that once the tenant was served the 10 Day Notice the tenant put a stop on the December's rent cheque that was sent in September and issued a new one to the landlord with rent cheques for January, February and March. The cheques for December and January have since been chased by the landlord. DM testified that this is a malicious attempt to evict the tenant and the owner and his agent are trying to abuse the system. The tenant seeks to have the 10 Day Notice set aside.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the Act states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

However, if the landlord had the tenants rent cheque when the 10 Day Notice was issued and served and chooses not to cash the rent cheque then the Notice is null in void. I am satisfied from the evidence presented that the landlord was sent the rent cheque for December in the same envelope with the rent cheques for October and November. As the rent cheques for October and November were cashed by the landlord and the landlord either misplaced the December rent cheque or chose not to cash it then this is not the fault of the tenant.

I further find the tenant resent the rent cheque for December after the landlord told the tenant he did not have it and this has since been cashed by the landlord along with the rent cheque for January.

Consequently it is my decision that that at the time the Notice was served no rent was owed by the tenant and the Notice is set aside.

As the tenant's claim has merit, I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*, and may deduct that amount from the next rent payment when it is due.

### Conclusion

The tenant's application to cancel the 19 Day Notice to End Tenancy dated December 10, 2014 is upheld. The Notice is cancelled and the tenancy will continue.

I grant the tenant leave to reapply for the reminder of the claim not heard today.

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: January 13, 2015

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Residential Tenancy Branch

