



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

This is an application filed by the tenant to cancel a notice to end tenancy issued for unpaid rent and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The tenant states that he did not submit any documentary evidence. The landlord submitted late documentary evidence three days before the hearing.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the notice to end tenancy?

### Background and Evidence

The tenants state that they were served with a 10 day notice to end tenancy issued for unpaid rent dated January 27, 2015. The tenant states that rent is paid in full until the end of March 2015.

The submitted copy of the notice dated January 27, 2015 states "The Criminal Activity is going on the property. Including the letter attached." The notice does not note any unpaid rent or when it was due. The notice does not display an effective end of tenancy date.

The tenant has also submitted copies of a letter dated January 27, 2015 from the landlord, a copy of a letter from the City of Surrey dated January 16, 2015, a copy of a letter from the City of Surrey dated January 15, 2015 and copies of 2 emails from neighbors all with issues regarding the state of the rental property and concerns over the tenant's activities.

The landlord confirmed in his direct testimony that there was no issues for unpaid rent and that the notice was issued for “criminal activity”.

### Analysis

Section 46 of the Residential Tenancy Act speaks to a 10 day notice to end tenancy issued for unpaid rent and states,

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

**(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].**

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Section 52 of the Residential Tenancy Act also states,

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

**(c) state the effective date of the notice,**

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

**(e) when given by a landlord, be in the approved form.**

It is clear upon review of the direct testimony of both parties and the notice to end tenancy issued for unpaid rent, that it is deficient. The landlord has not completed the form providing any details concerning unpaid rent or an effective end of tenancy date. The landlord confirmed in his direct testimony that rent is not an issue, but that the notice was issued for “criminal activity”.

Based upon the above, I find that the tenant is successful in establishing that notice should be cancelled. The tenant’s application is granted. The notice dated January 27, 2015 is set aside.

Having been successful, the tenant is also entitled to recovery of the \$50.00 filing fee. I grant a monetary order for \$50.00 to the tenant. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant's application is granted. The notice dated January 27, 2015 is set aside. The tenant is granted a monetary order for \$50.00.

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: February 20, 2015

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Residential Tenancy Branch

