



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

<u>Dispute Codes</u>	OPC, MNR, MNSD, MNDC, FF (Landlord's Application) CNC, CNR, RR (Tenant's Application)
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### Introduction

This hearing dealt with cross applications. In the Landlord's Application for Dispute Resolution the Landlord sought an Order of Possession based on a 1 Month Notice to End Tenancy issued on January 26, 2015 (the "Notice"), a Monetary Order for unpaid rent, money owed or compensation for damage or loss under the Act, Regulations or tenancy agreement and to recover the filing fee for the Application. The Tenant sought an Order cancelling the Notice, an Order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent, and for an Order that he be permitted to reduce his rent for the cost of repairs, services or facilities.

Both parties appeared at the hearing. The Tenant was assisted by a legal advocate, A.S. The Tenant also had available a witness, R.P.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

At the outset of the hearing, the A.S confirmed that a 10 Day Notice had not in fact been served such that the Tenant's request to cancel this notice was simply an error. Accordingly, I dismiss the Tenant's request to cancel a notice to end tenancy given for unpaid rent/utilities.

I confirmed that the main issue before me was the Notice to end tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the Notice ending tenancy. Therefore, pursuant to section 59(2)(b) of the Act, I dealt with the tenant's request to cancel the Notice and

the Landlord's request for an Order of Possession. The balance of the parties' applications are dismissed with leave to re-apply.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?

### Background and Evidence

The Notice was issued on January 26, 2015. The Landlord testified that he personally served the Tenant on that date. Introduced in evidence was a copy of the Proof of Service confirming same and noting that J.G. witnessed the Landlord serve the Tenant. Accordingly, I find that the Tenant was served with the Notice as of January 26, 2015.

The Notice informed the Tenant that the Tenant had ten days from the date of service to dispute the Notice by filing an Application for Dispute Resolution; in this case, the Tenant had until February 5, 2015 to file such an application.

The effective date on the Notice was February 28, 2015.

The Tenant filed his application on March 12, 2015. He erroneously forgot to note the dispute address and refiled on March 13, 2015 with this correction.

The Tenant did not apply for more time to make an application to cancel the Notice.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant did not apply to dispute the Notice within the ten days required under section 47(4) and is therefore conclusively presumed under section 47(5) of the Act to

have accepted that the tenancy ended on the effective date of the Notice. This is not a rebuttable presumption.

The Tenant did not apply for more time to make his application pursuant to section 66. In any event, as he filed after the effective date of the notice, I am prohibited from extending the time limit pursuant to 66(3) which reads as follows:

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Accordingly, the Tenant's application to cancel the Notice is dismissed. I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

### Conclusion

The Tenant failed to file his application within the time required under the Act. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy. The Tenant's application to dismiss the Notice is dismissed. The Landlord is granted an Order of Possession. The balance of the relief sought in each parties' application for dispute resolution is dismissed with leave to reapply.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: March 27, 2015

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Residential Tenancy Branch

