



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Swedish Canadian Manor Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** CNR; ERP; RPP; LRE

### **Introduction**

This Hearing was convened to consider the Tenant's Application for Dispute Resolution seeking to cancel a Notice to End Tenancy for Unpaid Rent; an Order that the Landlord make emergency repairs to the rental unit; an Order that the Landlord return the Tenant's personal property; and an Order suspending or setting conditions on the Landlord's right to enter the rental unit.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that he mailed the Notice of Hearing documents to the Landlord, by registered mail, on March 14, 2015. The Tenant stated that the package was returned to him because the address was incomplete. He testified that he had placed the folded documents in a windowed envelope, and that the Landlord's address was incomplete on the document provided to him by the Residential Tenancy Branch. The Tenant stated that he resent the documents by registered mail on March 25, 2015, to the Landlord's correct address. The Landlord's agent acknowledged receipt of the Notice of Hearing documents.

I advised the parties that I didn't have a copy of the Notice to End Tenancy which the Tenant seeks to cancel. The Tenant stated that he handed a copy to the Residential Tenancy Branch when he filed his Application for Dispute Resolution. I explained to the Tenant that the Branch does not make copies of documents and that he would have had to provide the Branch with a copy and sent a copy to the Landlord as well. The Landlord stated that she faxed a copy of the Notice to End Tenancy to the Residential Tenancy Branch on April 15, 2015.

The Tenant asked that the Landlord's evidence package be "dismissed" because the Landlord did not provide the Branch or him with copies of its evidence within the time frames provided by the Rules of Procedure. I explained to the Tenant that I could not consider an Application to cancel a Notice to End Tenancy if I did not have a copy of the Notice to confirm that it met the requirements of the Act.

### **Issues to be Decided**

- Should the Notice to End Tenancy issued March 3, 2015 (the “Notice”), be cancelled?
- Is the Tenant entitled to Orders that the Landlord provide emergency repairs and return the Tenant’s personal property?
- Should the Landlord’s right to access the rental unit be suspended or restricted?

### **Background and Evidence**

The Landlord’s agent testified that she served the Tenant with the Notice by taping it to the Tenant’s door on March 3, 2014. She stated that the Tenant gave his notice to end the tenancy in writing, effective October 31, 2014, and that he had not paid rent since.

The Tenant testified that the rental unit was full of bed bugs and had been for “more than two years”. He stated that he cannot move into a new place until the bed bugs are gone because he fears taking them with him. The Tenant testified that he was trying to “get my place into a position where it can be sprayed”, but that he has no one to help him. The Tenant acknowledged that he has not paid rent since he gave his notice to end the tenancy. He stated that he will “move out when my place is absent bed bugs”.

The Tenant testified that the Landlord made him dispose of his couch, which was of sentimental value because it was his mother’s.

### **Analysis**

Section 26 of the Act states:

#### **Rules about payment and non-payment of rent**

**26** (1) 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.

I find that the Tenant did not have a right under the Act to deduct all or a portion of the rent. The Tenant’s remedy would have been to file an Application for Dispute Resolution seeking an Order from the Director that he could deduct a portion of the rent or seek other Orders for repairs. The Tenant did not file such an Application.

Section 46(5) of the Act provides:

#### **Landlord's notice: non-payment of rent**

**46** (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.

I find that the Tenant did not pay rent when it was due, or within 5 days after receipt of the Notice. I find that the Tenant did not have a right under the Act to deduct any rent. **The Tenant's application to cancel the Notice is dismissed.** I find that the Notice is a valid Notice.

Section 90 of the Act deems service by posting a document on the Tenant's door to be effected 3 days after posting the document, in this case March 6, 2015. **I find that the tenancy ended on March 26, 2015, and that the Tenant is overholding.**

The Tenant did not allege that the Landlord is currently holding any of his personal property and this portion of his claim is **dismissed**.

The tenancy has ended and therefore I **dismiss the remainder of the Tenant's claim.**

I asked the Landlord's agent if she had any questions with respect to my finding that the tenancy had ended. She stated that she did not have any questions.

### **Conclusion**

The Tenant's application to cancel the Notice to End Tenancy is **dismissed**. The remainder of the Tenant's application is **dismissed with leave to reapply**.

**I find that the tenancy ended on March 26, 2015.**

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: April 16, 2015

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Residential Tenancy Branch

