



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      OPR, CNR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and the balance of unpaid deposits. 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.

### Procedural Matters

It was brought to my attention by the tenant's representative that the tenant had filed an Application to dispute the subject 10 Day Notice to End Tenancy for Unpaid Rent, along with a request for orders for compliance. A hearing is scheduled for a later date to hear the tenant's Application. It appeared that the tenant's Application was not joined with the landlord's because the tenant had named a different landlord. The tenant had named an agent for the landlord as the agent was the only person the tenant or occupant had any dealing with. The landlord acknowledged that the person named by the tenant is his brother-in-law and has acted on his behalf with respect to this tenancy. The landlord also stated that he was aware that the tenant had served the agent with the tenant's Application. The landlord stated that he is the landlord, as named on the tenancy agreement and the 10 Day Notice and not his brother in law; however, his brother-in-law intended to appear at the hearing scheduled to hear the tenant's Application.

Upon review of the tenant's Application, I noted that the tenant was two days late in filing to dispute the 10 Day Notice; however, the tenant had requested an extension so as to dispute the 10 Day Notice. I heard from the tenant's representative that the landlord had not provided a service address on the tenancy agreement or on the 10 Day Notice and they resorted to using the Internet in search for an address for the landlord's agent.

Under the Act, a landlord is required to provide a tenant with a service address and telephone number in the tenancy agreement. The Act also requires that a Notice to End Tenancy issued by a landlord must be completed in the approved form, which includes a service address for the landlord.

The tenancy agreement provided as evidence by the landlord was completed fully with the exception of a service address for the landlord. The 10 Day Notice was also completed in full, including the rental unit address in two places, but did not include the landlord's service address as required. I asked the landlord to provide an explanation for omitting the landlord's service address on the tenancy agreement and the 10 Day Notice to which he responded he did not have an explanation.

The landlord acknowledged that the first time he provided the tenant with a service address was when he mailed the landlord's hearing package to the tenant on June 26, 2015. I noted that the registered mail had been delivered on June 29, 2015. Thus, I found that the tenant did not have a service address for the landlord during the five days he had to dispute the 10 Day Notice. In these circumstances, I considered the 10 Day Notice to be disputed and I granted an extension of time to file a dispute.

Also during this hearing I heard testimony from both parties with respect to entry into the unit by the landlord's agent as it was relevant in hearing how the 10 Day Notice was served. As such, I have also considered whether it was necessary and appropriate to issue orders to either of the parties.

#### Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent for Unpaid rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to a Monetary Order for unpaid rent and the balance of unpaid deposits?
4. Is the landlord entitled to retain the security deposit?
5. Is it necessary to issue orders for compliance?

#### Background and Evidence

The tenancy commenced April 20, 2015 for a two year fixed term set to expire April 19, 2017. The tenant resides in the rental unit with an adult occupant, the tenant's representative at the hearing.

The tenant is required to pay rent of \$1,750.00 on the 20<sup>th</sup> day of every month. The tenant was also required to pay a security deposit of \$880.00 and a fob deposit of \$100.00 under the terms of tenancy. The tenant gave the landlord three cheques: one for the first month's rent, one for the security deposit and one for the fob deposit. All three cheques were dishonoured and returned to the landlord. The landlord agreed to give the tenant until June 15, 2015 to come up

with the rental arrears. However, the landlord has only received two payments of \$750.00 from the government with respect to benefits the occupant receives.

The landlord testified that the tenant began avoiding communication with the landlord or the landlord's agent. I heard from the tenant's representative that on June 15, 2015 the landlord agent entered the rental unit without proper notice. He was told to leave and eventually he did but then he tried to enter again.

I also heard consistent testimony that late in the evening of June 18, 2015 the landlord's agent and the landlord's sister entered the rental unit without proper notice, but in the accompaniment of the building's security guard. The landlord submitted that the 10 Day Notice to End Tenancy for Unpaid Rent was given to the tenant in person that night. The tenant's representative testified that the 10 Day Notice was left on the countertop; however, it was confirmed that they found both pages of the 10 Day Notice on the countertop that same night.

The landlord explained that his agent and sister had concerns for the tenant's health, or that of the occupant, in deciding to enter the unit on June 18, 2015. The tenant's representative refuted that position, saying they were asleep, and that the occupant's medical issues had been ongoing for the past two years.

The landlord stated the tenant and/or the occupant used foul language and pushed his agent on the evening of June 18, 2015. The tenant's representative explained that they were surprised to find the landlord's agent and an unknown woman in their unit late at night.

The landlord asserted that the tenant and/or the occupant have also used foul language during telephone calls. The occupant did not deny this allegation but responded by stating the landlord had "started it". I cautioned both parties to conduct themselves in an appropriate manner in future and suggested they limit their communication to written format if they are unable to do so.

The 10 Day Notice indicates the tenant failed to pay rent of \$3,750.00 as of May 20, 2015 and a handwritten notation indicated that a further \$1,750 was due on June 20, 2015. As described previously in this decision, the landlord completed all sections of the 10 Day Notice with the exception of the landlord's service address which was left blank. The tenant's representative also pointed out that the tenancy agreement does not include a service address for the landlord. As such, to dispute the 10 Day Notice they had to search the internet for an address and found one for the landlord's agent.

Since the landlord has only received two partial payments of \$750.00, the landlord seeks to end the tenancy based upon the 10 Day Notice served on June 18, 2015 despite the omission of the service address. The landlord also requested a Monetary Order for unpaid rent that was due April 20, May 20 and June 20, plus the balance of the unpaid deposits and the fob deposit, less the two partial payments of \$750.00.

The tenant's representative explained that the tenant's bank account was frozen by an action brought forward by the tenant's ex-wife and/or family maintenance and it was acknowledged that the rent sought by the landlord is payable. The tenant's representative submitted that the landlord's agent had agreed to wait until June 15, 2015 for the rental arrears but had not agreed to a further extension when the court date was held over from June 15, 2015 to July 16, 2015. Essentially, the tenant seeks more time to pay the rental arrears.

Documentary evidence provided for my review included copies of: the tenancy agreement; the 10 Day Notice; the cheques that were returned; and bank statements of the landlord to confirm the cheques were dishonoured.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Section 13 of the Act requires that a landlord provide the tenant with a service address and a telephone number for the landlord or the landlord's agent in the tenancy agreement. This requirement serves a multitude of purposes including a way for the tenant to send the landlord payment, serve documents upon the landlord, and a means to contact the landlord to seek repairs. Upon review of the tenancy agreement signed by the parties, which includes an addendum, I note that it was completed fully by the landlord with the exception of a service address and telephone number for the landlord or landlord's agent.

Despite the landlord's failure to provide the tenant with a service address and telephone number, the Act requires that the tenant must pay rent when it is due under the terms of tenancy, 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 for very specific and limited circumstances when a tenant may legally withhold or not pay rent. In this case, it is undeniable that the tenant failed to pay all of the rent owed to the landlord and after hearing from the tenant's representative I find the tenant did not present a legal basis under the Act for not paying the rent that is due to the landlord.

Where a tenant fails to pay rent, the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act. Section 46 of the Act requires the Notice to End Tenancy to be completed in a manner that complies with section 52 of the Act. It must also be served upon the tenant in a manner that complies with section 88 of the Act. Upon receipt of a 10 Day Notice, the tenant has five days to pay the outstanding rent to nullify the Notice or file to dispute the Notice.

I accepted the tenant's version of events that the 10 Day Notice was left on the countertop by the landlord's agent on June 18, 2015 as the landlord's agent was not present to testify that it

was served in person as submitted by the landlord. Leaving a document on a countertop is not a method of service under the Act; however, since the tenant confirmed receiving it on June 18, 2015 I deem the tenant sufficiently served pursuant to the authority afforded me under section 71 of the Act.

Section 52 of the Act requires that a Notice to End Tenancy issued by a landlord must be in the approved form. The landlord used the 10 Day Notice that is currently approved by the Director; however, the landlord did not complete all of the relevant sections of the 10 Day Notice. In particular, the service address for the landlord. Providing a service address to the tenant on the Notice to End Tenancy serves multiple purposes, including: the address at which the tenant may send payment and the address at which the tenant may serve the landlord if the tenant wishes to dispute the Notice to End Tenancy.

Residential Tenancy Policy Guideline 11: *Amendment and Withdrawal of Notices* provides policy statements that pertain to amending a Notice to End Tenancy. It provides, in part:

The Legislation allows an arbitrator, on application, to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in the circumstances.

In determining if a person "should have known" particular facts, an arbitrator will consider whether a reasonable person would have known these facts in the same circumstances. In determining whether it is "reasonable in the circumstances" an arbitrator will look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

[reproduced as written with my emphasis added]

Considering the landlord had not provided a service address on the tenancy agreement or any other way until the tenant received the landlord's Application for Dispute Resolution 11 days after the 10 Day Notice was served, I find the tenant did not "know, or should have known" the landlord's service address during the five days the tenant had to pay the rent or file a dispute. Therefore, I find the tenant was unfairly prejudiced by the omitted information and I decline to amend the 10 Day Notice.

Since the omitted relevant information from the 10 Day Notice that the tenant did not otherwise know, I find the 10 Day Notice issued on June 18, 2015 was not sufficiently completed and I find it to be invalid and ineffective. Therefore, I cancel the 10 Day Notice with the effect that this tenancy continues at this time.

Having cancelled the 10 Day Notice I deny the landlord's request for an Order of Possession at this time. However, **the landlord is at liberty to issue another 10 Day Notice that includes all of the outstanding rent as of the day of service.** Upon receipt of a subsequent 10 Day

Notice the tenants will have five days to pay the outstanding rent to nullify the Notice or file to dispute.

Since it was undisputed that the tenant has failed to pay all of the rent owed to the landlord I provide the landlord with a Monetary Order that may be served and enforced should the tenant fail to pay the amount. I note that the landlord has required the tenant to pay a security deposit greater than one-half of the monthly rent and I have reflected the correct amount in the calculation below.

Rent due April 20, 2015	\$ 1,750.00
Rent due May 20, 2015	1,750.00
Rent due June 20, 2015	1,750.00
Security deposit, as corrected	875.00
Fob deposit	100.00
Less: two partial payments of \$750.00	<u>(1,500.00)</u>
Outstanding rent	\$ 4,725.00

As the tenancy continues at this time, any deposit paid remains in trust to be administered in accordance with the Act.

Having heard both parties allege inappropriate conduct by the other party, I issue the following order and caution to the parties. It should be noted that I found the landlord's explanation that his agent entered the rental unit to check on the welfare of the tenant or the occupant to be very unlikely given the landlord's agent actually attended the property for purposes of serving the 10 Day Notice. Nor, did I hear evidence from the landlord that entry was made in response to signs of an emergency that was a threat to life or property.

#### **Order to the landlord**

The landlord, or any agent acting on behalf of the landlord, must not enter the rental unit unless entry complies with section 29 of the Act.

#### **Caution to the tenant**

The tenant is cautioned that conduct by him, or a person that he permits on the property, that interferes with the landlord's lawful right or ability to carry on business as a landlord, may be grounds for ending a tenancy for cause as provided under section 47 of the Act.

Below, I have reproduced section 29 of the Act for the parties' reference.

#### **Landlord's right to enter rental unit restricted**

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

[reproduced as written]

### Conclusion

The 10 Day Notice issued on June 18, 2015 was invalid and it was cancelled with the effect that this tenancy continues at this time.

The landlord is at liberty to issue another 10 Day Notice that includes all of the unpaid rent payable at the time of service.

The tenant owes the landlord \$4,725.00 as of today's date and I provide the landlord with a Monetary Order to serve and enforce if the tenant fails to pay this amount. The security deposit paid to date remains in trust to be administered in accordance with the Act after the tenancy ends.

I have issued an Order to the landlord to comply with section 29 of the Act. I have cautioned the tenant as to his conduct or that of his occupant.

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: July 17, 2015

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Residential Tenancy Branch



