



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding P&W TRADING CORP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNR, RP, RR

### Introduction

This hearing was convened in relation to the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

While the landlord's agent attended the hearing by way of conference call, the tenants did not, although I waited until 1112 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100.

The agent informed me at the hearing that the tenants vacated the rental unit on or about 1 August 2015. The agent asked that I still issue an order of possession just in case the tenants come back.

### Preliminary Issue – Partial Disposition of Tenants' Claim for Failure to Appear

Rule 10.1 of the Rules of Procedure provides that:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the applicant and in the absence of the applicant's participation in this hearing, I order the following portions of the tenants' application dismissed without leave to reapply as the tenants have failed to meet their evidentiary burden:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice);
- an order to the landlord to make repairs to the rental unit; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided.

### Issues

Should the 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession for unpaid rent?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

The agent testified that the tenancy began in November 2014. Monthly rent of \$1,000.00 was due on the first.

The agent testified that he served the tenants with the 10 Day Notice by posting the notice to the tenants' door. The 10 Day Notice set out an effective date of 22 June 2015. The 10 Day Notice was given as the tenants had failed to pay \$2,000.00 in rent that was due 1 June 2015. The agent testified that this was rent arrears of \$1,000.00 from May and \$1,000.00 from June. The agent testified that the tenants have current rent arrears in the amount of \$3,000.00.

The agent testified that the tenants performed some work for the landlord and that the amounts owing from the landlord to the tenants were offset against the tenants rent obligations. The agent testified that the amounts owing in excess of rent were paid directly to the tenants. The agent testified that no further amounts are owed from the landlord to the tenants.

The agent testified that he agreed to pay the tenants \$500.00 if they vacated the rental unit by 1 August 2015. The agent testified that the tenants vacated the rental unit on or about 1 August 2015. The agent testified that the tenants left debris in the rental unit and that he does not want them to come back.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants did not make an application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 22 June 2015. The tenants' application to cancel the 10 Day Notice is dismissed.

The agent testified that the tenants vacated the rental unit on or about 1 August 2015. I find that possession of the rental unit returned to the landlord on or about 1 August 2015 when the tenants vacated. As such, I decline to issue an order of possession as possession has already returned to the landlord and thus the issue is moot.

### Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord's request for an order of possession is dismissed as the issue is moot: possession of the rental unit returned to the landlord when the tenants vacated the rental unit on or about 1 August 2015.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 19, 2015

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Residential Tenancy Branch