



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This is an application brought by the tenant requesting an order canceling a Notice to End Tenancy that was given for nonpayment of rent.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed.

### Issue(s) to be Decided

The issue is whether or not to cancel or uphold a Notice to End Tenancy that was given for nonpayment of rent.

### Background and Evidence

This tenancy began on June 1, 2013 and the present monthly rent is \$1295.00.

The tenant had fallen behind on the rent and therefore on July 8, 2015 the landlord served the tenant with a 10 day Notice to End Tenancy for failing to pay rent in the amount of \$1672.00.

On July 16, 2015 the tenant applied for dispute resolution to have the notice canceled.

The landlord has since collected the full rent for the months of July 2015, August 2015, and partial rent for September 2015.

Analysis

Section 46 of the Residential Tenancy Act 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.

Therefore since the tenant received the Notice to End Tenancy on July 8, 2015 he was required to dispute the notice by July 13, 2015. The tenant however did not file a dispute of the notice until July 16, 2015 and therefore the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the notice, which in this case was July 18, 2015.

I therefore will not be issuing any order canceling the Notice to End Tenancy that was issued on July 8, 2015, however, that being said, the landlord has subsequently collected rent for both August 2015, and a portion of September 2015, and in doing so

the landlord has reinstated this tenancy and can no longer rely on the July 8, 2015 Notice to End Tenancy to end this tenancy.

If the landlord still wishes to end this tenancy, another Notice to End Tenancy will have to be issued.

### Conclusion

The application to cancel the July 8, 2015, 10 day Notice to End Tenancy is dismissed.

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: September 17, 2015

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Residential Tenancy Branch

