



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MR, CNR,OLC, AAT, LAT, FF

### Introduction

At the beginning of the hearing the tenant clarified that his claim is for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent; granting him more time in which to file that application; compelling the landlords to comply with the Act, regulation or tenancy agreement; allowing the tenant access to the rental unit; and limiting the landlord's right of entry. Both parties appeared and gave affirmed testimony.

The tenant had filed evidence which included copies of a number of e-mails. The landlord advised that although they had received the other documents submitted by the tenant they had not been served with any e-mails by him and therefore, were not able to confirm that the e-mails submitted in evidence were the same as those in their possession.

Rule 3.7 of the *Residential Tenancy Branch Rules of Procedure* provide that "to ensure a fair, efficient and effective process, an identical package of documents and photographs, which are identified in the same manner and are placed in the same order, must be served on each respondent and submitted to the Residential Tenancy Branch".

At the end of the first day of the hearing I asked the tenant to resend copies of all documents filed with his application for dispute resolution, but no others, to the landlords' lawyer. I understood him to agree to do this.

At the beginning of the continuation of the hearing the landlords' lawyer advised that they had not received the documents from the tenant. The tenant said he had understood that he did not have to send anything to the lawyer so had not. He said he must have misunderstood me.

Any party submitting evidence must be prepared to demonstrate to the satisfaction of the arbitrator that the other side has been served with all evidence as required by the legislation or the rules of procedure. (See Rules 3.5 and 3.16)

The tenant did not provide proof of service of all the documents he filed on the respondent. When given an opportunity to correct any deficiencies regarding service and/or proof of service he did not do so. Accordingly, the e-mails filed by the tenant will not be accepted into evidence. All other documents filed by the tenant in evidence have been accepted as evidence and considered in the preparation of this decision.

#### Issue(s) to be Decided

- Should the tenant be granted additional time in which to file his application disputing the notice to end tenancy?
- If so, is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated June 5, 2016 valid?
- Should any orders be made as requested by the tenant and, if so, on what terms?

#### Background and Evidence

The tenant described himself as a “hemp pioneer”. He also testified that although he is neither a real estate agent nor a developer he works with developers, real estate agents, lawyers, and other professionals.

The male landlord was described by his widow as a very creative man, always interested in hearing about and thinking through anyone’s ideas for new businesses.

The male landlord and the tenant had known each other for many years and shared an interest in the development of commercial hemp. In 2012 they talked and, according to the tenant, they came to an agreement to work together on developing value added projects for the farm owned by the landlords. The agreement was that the tenant would search for and obtain investors for this project and if successful, the tenant would be compensated for his efforts. The only documentation filed regarding this agreement was a four page document dated February 2015, which sets out a number of different possible scenarios for investment and compensation. The document was prepared by the tenant and is not signed by anyone.

The tenant says that he moved to the farm in October, 2012, and has been pursuing their mutual objective ever since. He testified that he and the male landlord worked together very closely and communicated frequently.

The tenant testified that their oral agreement was that his rent would be \$300.00 a month, to be offset by consulting fees for the work he performed for the landlord, which if invoiced would be in the range of \$50.00 to \$100.00 per hour. The tenant never prepared a written accounting of his services nor submitted an invoice to the male landlord; nor did the male landlord ever make any written request for rent or submit any other bill to the tenant. The tenant has never paid anything for rent. Although the possibility of the male landlord being made a director of the tenant's company apparently discussed by the tenant and the male landlord that never happened.

The tenant and the male landlord did sign a tenancy agreement dated October 30, 2012. The agreement was between the male landlord and the tenant's business. That agreement describes the rental unit as "portions of the small barn (approximately 1,200 square feet). . .for use for farm production and storage purposes"; says the tenancy commenced May 1, 2012; and sets the monthly rent at \$450.00. The tenant says this document was prepared solely so the landlord could increase the mortgage on the property and did not reflect the true agreement between them.

In April 2015 the male landlord was diagnosed with inoperable stage 3 pancreatic cancer. His wife was very involved with his care and their son assumed a more active role in his parents' financial and business affairs.

Wife and son were dismayed by what they discovered. The credit cards were all maxed out; there was a fully extended \$100,000.00 line of credit that neither knew about; and none of the many tenants on the farm were paying any rent. The landlords' financial situation was very difficult so the son started trying to put his parents' affairs in order.

On May 17 the male landlord and his son went to the farm to obtain some of the landlord's records and to introduce the son to the tenants. The male landlord was very sick. The tenant and the son had a conversation. The son told the tenant he wanted to talk to him about rent. The tenant told him that he has never paid rent in cash, only by stocks in the tenant's company. When the son asked about the stocks the tenant responded that he hadn't actually given the deceased any stocks but he could. He refused to pay any money for rent. The tenant said he offered the son the same deal he had with the father.

On May 19 the male landlord signed a note designating his son as his agent in the management of the farm.

On June 2 the son personally gave the tenant a letter asking for rent. There was no response.

On June 5 the son issued and personally served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent. The notice was in an envelope. The tenant testified that the son told him what was in the envelope but he did not bother to open it. He testified that he was shocked that the son and the female landlord were acting in a manner contrary to the male landlord's wishes. He also testified that he did not take the son's action seriously because he had an agreement with the male landlord. Later in the hearing he testified that he did not pay attention to the document because it was an insult and illegitimate.

On June 7 a contract for purchase and sale of the farm was signed by an individual and subsequently signed by the male and female landlords. The offer was accompanied by a \$50,000.00 deposit. The offer did not ask for vacant possession of the property.

The female landlord testified that after her husband was diagnosed he became very ill very quickly. In the days before his death, he was in the hospital, taking high doses of morphine and was delusional. The son testified that in the last days of his life, his father was going in and out of psychosis.

The tenant testified that on June 18 he and another man went to the hospital to see the male landlord. The tenant said the male landlord was on major painkillers but spoke clearly to him about this project and other projects. The tenant filed a copy of a two page handwritten, unsigned, unwitnessed note that the tenant says was written by the male landlord. According to the tenant this note includes a gift to him of \$5000.00.

The male landlord died two days later at the age of 76 years.

The sale of the farm fell through at the end of July. The landlords filed copies of some of the correspondence in which they tried to salvage the sale. The son testified that the purchaser is demanding return of the \$50,000.00 deposit and the issue looks like it's going to court.

The tenant insists that it is a non-refundable deposit; it is money that he obtained for the landlords; and is a service for which he is entitled to be reimbursed for by the landlords.

The tenant has taken no formal measures to claim any fees or commissions that may or may not be due to him. He says he has two other potential purchasers for the property but to date no written offer to purchase have been presented to the landlords.

Towards the end of August the female landlord spoke to the tenant on the telephone advising him that she wanted him to move off the farm. She followed up this call with an e-mail that said the same thing.

It was only at this point that the tenant filed this application for dispute resolution with the Residential Tenancy Branch. On his application he named the male and female landlords as the respondents.

The tenant testified that from the start of his tenancy until September 1 of this year he used the bathroom in the house located near the barn. He says that there are three rental units in the house and he used to help the male landlord with the Air B & B rentals of those units. The house has been locked since September 1, 2015.

The tenant testified that on September 1 the son and two other men came to the barn. They entered the area of the barn where he has two cars parked. He lives in a smaller portion of the barn which he referred to as the office area. The office area can be accessed from the area where his cars are parked. None of the men entered the office area and he has since replaced the lock.

The son testified that the tenant had created a wall between two areas of the barn. He was quite surprised to see that the tenant had two quite valuable cars and other mice belongings stored in the barn. They did not go into the area where the tenant is living.

### Analysis

The notice to end tenancy served on the tenant includes information advising a tenant, among other things, that:

- The notice is cancelled if the tenant pays the arrears within five days.
- The tenant has five days to dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.
- The tenant may dispute the notice if they have proof that the rent was paid.
- The tenant is not entitled to withhold rent unless ordered by a dispute resolution officer.
- The tenant may be evicted if they do not respond to the notice.

Section 66(1) allows an arbitrator to extend a time limit only in exceptional circumstances. What may be and may not be considered exceptional circumstances are explained in *Residential Tenancy Policy Guideline 26: Extending a Time Period*. The *Guideline* sets out some examples of what are not considered exceptional circumstances including:

- The party who applied late for arbitration was not feeling well.
- The party did not know the applicable law or procedure.

- The party was not paying attention to the correct procedure.
- The party relied on incorrect information from a friend or relative.

In the hearing the tenant presented himself as a sophisticated businessperson, capable of putting together complex business arrangements. However, his explanation for not taking reading the information provided to him and for not filing his application disputing the notice within the time required is that he was too upset and/or did not take the matter seriously. These are not exceptional circumstances within the meaning of the legislation. The tenant's application for an order extending the time in which to file this application is dismissed. Pursuant to section 46(5) he is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

Although the landlords did not take immediate action to obtain an order of possession I find that their conduct in the period after the notice was served which included the final illness, death and funeral of the female landlord's spouse; the ultimately unsuccessful attempts to conclude a sale of the farm; and the work of attempting to resolve other business difficulties left by the male landlord; did not show any intention to waive their rights under the notice to end tenancy. Further, there was no suggestion that the tenant was induced by the female landlord's or the son's conduct to believe that they intended to waive their rights under the notice to end tenancy. The tenant never testified that he did not dispute the notice because he thought the landlords had agreed to waive the notice; he testified that he did not take them or the notice seriously.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the arbitrator must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. The landlord is entitled to an order of possession effective two days after service on the tenant.

As the tenancy is ending any requests for orders limiting the landlords' right of entry or access to the rental unit by the tenant are moot.

As the tenant was unsuccessful on his application no order for reimbursement of the fee he paid to file this application will be made.

### Conclusion

- a. The tenant's application is dismissed.

- b. An order of possession effective two days after service is granted to the landlords. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court. As the male landlord has died since the notice to end tenancy was served the order of possession will be in favour of the female landlord only.

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: December 03, 2015

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Residential Tenancy Branch

