



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Trojan Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This was a hearing with respect to the landlord's application for an order for possession and a monetary order for unpaid rent. The hearing was conducted by conference call. The named persons attended as representatives of the corporate landlord. The tenant did not call in or participate in the hearing. The landlord's representatives testified that on February 18, 2016 the tenant was personally served with the application and Notice of Hearing by R.S., the son of the landlord's representative.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award for unpaid rent?

### Background and Evidence

The rental property is a house in Surrey. The landlord's representative testified that the house is divided into an upper and lower suites and the tenant resides in the upper suite, although the landlord's application did not specify which suite was the subject of the application.

The landlord's representatives said that there is no written tenancy agreement with the tenant. I was advised that the tenancy began in 2002, that the monthly rent is \$300.00, payable on the first of each month and that the tenant did not pay a security deposit.

The landlord submitted a copy of a 10 day Notice to End Tenancy dated February 6, 2016. The Notice provided that the tenant failed to pay rent in the amount of \$400.00, but it failed to specify the date that the rent was due. The Notice required the tenant to move out of the rental unit by February 15, 2016. The Notice submitted as evidence was unsigned, but the landlord testified that the notice was personally served to the

tenant on February 6, 2016 and the copy given to the tenant was signed by the landlord's representative.

At the hearing the landlord's representatives referred to letters sent to the landlord by the City of Surrey making complaints about disturbances at the rental property and alleging that the behaviour of the occupants of the rental property that required numerous police attendances constituted a nuisance to the neighborhood. The letters were dated January 30, 2016 and January 31, 2016.

In the application for dispute resolution filed on February 17, 2016 the landlord said in the details of the dispute that:

Tenant has been late or non paying of rent Multiple complaints (Noise Violations) from City of Surrey.

The landlord included a Direct Request Worksheet as evidence in support of the Application for dispute resolution. According to the worksheet the history of rent payments was as follows:

| Date rent was due   | Rent amount owing | payments received | balance |
|---|-------------------|-------------------|---------|
| Oct 31/15   | 300.00            | 0                 | 300.00  |
| Nov 30/15   | 300.00            | 300.00, Nov 29/15 |         |
| Dec 31/15   | 300.00            | 0                 | 600.00  |
| Jan 31/16   | 300.00            | 0                 | 900.00  |
| Feb 29/16   |                   | 500.00            | 400.00  |
| Amount listed for unpaid rent on the 10 day Notice to End Tenancy |                   |                   | 400.00  |

The landlord's representatives said at the hearing that the amount of \$700.00 was currently due for rent and unpaid.

The landlord's representatives testified at the hearing that it was imperative that the landlord be granted an order of possession because the City of Surrey has made written complaints to the landlord and threatened to levy fines and nuisance abatement fees if the disturbances caused by the occupants of the rental property do not cease.

### Analysis

The landlord has claimed that it has cause to end this tenancy because the tenant is disturbing other residents in the neighbourhood as set out in letters from the City of Surrey. The landlord did not serve the tenant with a one month Notice to End Tenancy for cause and it did not apply for an early end of tenancy on the basis that it would be unreasonable or unfair to the landlord or other occupants of the rental property to wait for a notice to end the tenancy for cause to take effect.

In the absence of a Notice to End Tenancy for cause or an application for an early end of tenancy, the evidence as to disturbance by the tenant is not relevant to the claims in the application.

Section 52 of the *Residential Tenancy Act* provides that in order to be effective a Notice to End Tenancy must be in writing and must be signed and dated by the landlord, must give the address of the rental unit and state the effective date of the notice, state the grounds for ending the tenancy. The notice is also required to be in the approved form.

The notice provided as evidence was not signed by the landlord, but I accept the landlord's testimony that the copy given to the tenant was signed. The notice in this case had other deficiencies; it did not provide the date when the failed rent payment was due to be made and the notice referred to the civic address of the rental property, not to the upper unit of the rental property.

According to the landlord's evidence the tenant has been in arrears of his rent for several months, not merely for the month of February, when the Notice was given. Because of the fact that rent has been outstanding for several months, I find that the landlord's failure to state a specific date when the unpaid rent was due is not fatal to the application for an order of possession.

The tenant has been served with the Notice to End Tenancy and he must know that it applies to the upper unit occupied by him. He did not pay the rent and he did not apply to cancel the Notice. Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the undisputed evidence submitted by the landlord, I find that the tenant has been served with the application and the Notice to End Tenancy. I find that the Notice to End Tenancy, despite its flaws adequately informed the tenant of the reason why it was given and the consequences that would ensue if the tenant did not respond appropriately.

I find that the landlord is entitled to an order of possession of the rental unit effective two days after service on the tenant; the style of cause in the proceeding has been amended to show that the decision and order applies solely to the upper rental unit. This order may be filed in the Supreme Court and enforced as an order of that court.

At the hearing the landlord claimed that the tenant owed \$700.00 in unpaid rent. The landlord claimed payment of the sum of \$400.00 in the application and it has not been amended to claim a greater amount. I therefore award the landlord the sum of \$400.00 for unpaid rent as claimed in the application. The landlord is entitled to recover the \$100.00 filing fee for this application and I grant the landlord an order under section 67 in the amount of \$500.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

### Conclusion

The landlord has been granted an order of possession and a monetary order for unpaid rent.

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 05, 2016

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Residential Tenancy Branch