



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOW TIDE PROPERTIES C/O HUNTER MCLEOD REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDC, FF

### Introduction

On June 14, 2016, the Tenant submitted an Application for Dispute Resolution to cancel a Notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement; and to recover the cost of the filing fee. The matter was set for a conference call hearing. The Tenant and Landlord attended the hearing. The Tenant and Landlord were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Both parties provided a copy of a Decision from a previous dispute resolution hearing involving both parties that was heard on June 2, 2016. In the decision, the Arbitrator ordered:

*"I order the tenant to pay rent in the amount of \$1,800.00 for the month of June 2016, or may reduce that amount to \$1,700.00. If the tenant fails to pay rent for June in one of those amounts within three days of the landlord receiving this Decision, the landlord will be at liberty to serve a 10 Day Notice To End Tenancy For Unpaid Rent or Utilities, and the Residential tenancy Act applies."*

The Tenant is seeking a monetary order. Rule 2.3 of the Rules of Procedure permit an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Tenant's application is whether or not the tenancy will continue. Further, the remainder of the relief being sought by the Tenant is monetary in nature. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's application to cancel the Notice to end tenancy, with leave to reapply for the monetary claim at a later date.

### Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on March 1, 2013, as a month to month tenancy. The Tenant testified that his employment situation with the Landlord ended on September 23, 2015, and since that time he pays rent in the amount of \$1,800.00 per month. The Tenant did not pay a security deposit or a pet deposit.

The Landlord testified that after receiving the Decision from the previous hearing, he waited for the Tenant to pay the rent. When the Tenant failed to pay the rent for June 2016, the Landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 9, 2016 ("the June Notice").

The Landlord testified that the June Notice was served to the Tenant on June 13, 2016, by posting it to the Tenant's door. The Notice states that the Tenant has failed to pay rent in the amount of \$1,800.00 which was due on June 1, 2016. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that he did not receive rent from the Tenant for the month of July 2016. On July 2, 2016, the Landlord issued the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 5, 2016 ("the July Notice"). The Notice states that the Tenant has failed to pay rent in the amount of \$1,800.00 which was due on July 1, 2016. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant must pay his rent on time. The Landlord requested an order of possession if the Tenant's application to cancel the June Notice and July Notice are not successful.

The Tenant testified that he did not pay the rent for June 2016, or July 2016, because he is living in a care-takers suite.

### Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant did not pay rent to the Landlord for the months of June 2016, and July 2016.

I also find that the Tenant failed to comply with the order made by the Arbitrator in the previous hearing that the Tenant must pay June 2016 rent within three days.

I find that the Tenant had no right to withhold payment of the rent. I dismiss the Tenants application to cancel the June Notice and July Notice. The tenancy is ending.

Under section 55 of the Act, when a Tenants application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the June Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the Tenant was not successful with his Application, I do not grant recovery of the filing fee for the Application.

#### Conclusion

The Tenant failed to pay the rent in accordance with the tenancy agreement and in accordance with an Arbitrator's order. The tenancy is ending.

I grant the Landlord an order of possession effective 2 (two) days, after service on the Tenant.

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 20, 2016

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Residential Tenancy Branch