



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HFBC HOUSING FOUNDATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      mnr, opr

### Introduction

The landlord has applied for dispute resolution of a dispute in the tenancy at the above noted address, and requests an Order of Possession and a Monetary Order for unpaid rent.

Both parties attended the hearing, and I accept that the tenant was properly served with the landlord's Application for Dispute resolution hearing package, as well as the 10 Day Notice to End Tenancy, dated June 22, 2016. In this latter respect, I prefer the landlord's testimony that the tenant came into the landlord's office to discuss the notice once he received it, as opposed to the tenant's testimony that he could not recall whether or not he had received the notice.

### Issues to Be Decided

- Is the 10 day Notice to End Tenancy effective to end this tenancy and entitle the landlord to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent money due and payable by the tenant to the landlord?

### Background and Evidence

This tenancy began October 1, 2002. The monthly rent after subsidy is \$450.00, due on the 1<sup>st</sup> day of each month. The tenant withheld March rent, as a means of inducing the landlord into making repair to the premises including painting work and cabinetry work. The tenant now refuses to pay the rent, on the basis he was obliged to eat outside because the repairs were lengthy in duration. The landlord served the tenant with a 10 Day Notice to End Tenancy on June 22, 2016. The March rent was not paid within the requisite 5 days, and the tenant did not apply for dispute resolution to dispute the Notice to End Tenancy.

### Analysis

As set out in section 26(1) of the Residential Tenancy Act, the tenant was required to pay rent, whether or not the landlord had complied with their obligations to make repairs. The tenant therefore was not entitled to withhold March's rent as inducement for such repairs, or because of any inconvenience suffered by the tenant. If indeed the

tenant had a legitimate unresolved claim as against the landlord, the appropriate approach would have been to pay the rent, and file an Application for Dispute Resolution. Once the tenant received the 10 Day Notice, his choices were clear – pay the rental arrears or dispute the Notice within 5 days (all as set out in the Notice), or vacate within 10 days.

In the absence of the required payment of the rental arrears, or of a dispute of the notice within the 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice, by virtue of section 46(5)(a) of the Residential Tenancy Act.

The effective date of the Notice has passed, and is now extended as a result of a necessary use and possession period pending the outcome of this hearing. I therefore do not consider the tenancy to have been reinstated by the landlord by virtue of the acceptance of rent payments in June, July or August. The landlord has established a right to possession. Having accepted rent for the month of August, the tenancy ends August 31, 2016. An Order of Possession is made effective that date.

The landlord is awarded \$450.00 for the March rental arrears. This sum must be paid by the tenant to the landlord immediately.

#### Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective August 31, 2016. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is issued a Monetary Order of \$450.00.

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: August 19, 2016

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Residential Tenancy Branch

