



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CROSSROADS ENT. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, ERP, MNDC, PSF, RR

### Introduction

On August 31, 2016, the Tenant made an Application for Dispute Resolution requesting a monetary order for money owed or compensation for damage or loss under the Act, regulations or tenancy agreement; to make emergency repairs; for the Landlord to provide services or facilities provided by law; and to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided. On September 6, 2016, the Tenant amended the Application to include a dispute of a 10 Day Notice to End Tenancy, and a request for an order of possession of the rental unit.

The matter was set for a conference call hearing. The Landlord P.L. and the Tenant's agent J.B. attended the teleconference hearing. The Tenant provided a letter which permits J.B. to speak on his behalf.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

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

Neither party to the dispute provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the 10 Day Notice"). The Landlord testified that he issued the 10 Day Notice using the proper form obtained from the Residential Tenancy Branch (the

RTB). At the conclusion of the hearing, the Landlord provided a fax copy of the 10 Day Notice dated September 2, 2016, to the RTB.

The Rules of Procedure permit an Arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The Tenant is disputing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2016, with an effective date of September 14, 2016. As the primary issue to decide is whether or not the tenancy has ended, I have dismissed the Tenant's other claims with leave to reapply.

The Tenant's advocate J.B. initially testified that the Tenant did not receive a 10 Day Notice from the Landlord. When J.B. was asked why the Tenant amended his Application to dispute a 10 day Notice that was received on September 2, 2016, the Tenant's advocate changed his testimony and stated that the Tenant did receive the 10 Day Notice that was posted to his door.

The Landlord testified that he served the Tenant with a copy of his evidence by sending it to the Tenant's address using Registered Mail on October 11, 2016. The Landlord testified that he sent 12 pages of evidence but did not provide the Tenant with any photographs. The Landlord provided a copy of the Canada Post Registered Mail receipt as proof of service. I note that the receipt bears the Tenant's address. The Landlord testified that the Tenant did not pick up the Registered Mail.

The Tenant's agent testified that the mail would have been picked up if it was sent.

Section 88 and 90 of the Act states that mail given or served to a party by Registered Mail is deemed to be received on the fifth day after it is mailed. I find that the Landlord's 12 pages of evidence was sent to the Tenant by Registered Mail and it is deemed received by the Tenant and it will be considered in this hearing. The Landlord's photographs were not sent to the Tenant and will not be considered in this hearing.

#### Issue to be Decided

Should the 10 Day Notice dated March 4, 2016 be cancelled?  
Is the Landlord entitled to an order of possession?

#### Background and Evidence

The parties testified that the tenancy began on May 14, 2015, as a month to month tenancy. The Tenant is required to pay Rent in the amount of \$725.00 per month by the

first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$362.50.

The Landlord testified that the Tenant failed to pay rent for the month of September 2016. The Landlord testified that the Tenant was served with the 10 Day Notice dated September 2, 2016, by positing it to the Tenant's door on September 2, 2016. The property manager D.L. testified that she signed the 10 Day Notice and posted it to the Tenant's door. The Notice indicates that the Tenant has failed to pay \$725.00 that was due on September 1, 2016.

The 10 Day Notice states that the Tenant has five (5) days to pay the rent or dispute the Notice.

The Landlord testified that they have not received any payments from the Tenant, or on behalf of the Tenant, since the 10 Day Notice was issued.

The Landlord testified that he received a letter from a housing and support society that states they are not paying the rent for the Tenant for September 2016. The letter states that the Tenant is being discharged from the program because there has been no contact with them since June 29, 2016. The Letter states they are not supporting the Tenant with subsidized rent any longer.

The Tenant's agent stated that the rent was paid for September 2016. He stated that the housing and support agency paid the rent for September. The Tenant's agent stated that the housing and support agency changed their mind after they wrote the letter and paid the Tenant's rent for September 2016. The Tenant's agent did not provide any proof to support his testimony.

The Tenant's agent stated that a Tenant can dispute a 10 Day Notice for specific reasons such as they have proof the rent was paid; they have an order to withhold rent from an arbitrator; and they held part of the rent for the cost of emergency repairs. The Tenant's agent was asked if he provided any evidence to support these specific reasons and the Tenant's agent replied "no".

### 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 month of September 2016.

The Tenant's agent knew that there was dispute over the payment of September 2016 rent but did not provide any evidence to counter the Landlord's evidence that the housing and support company did not pay the Tenant's rent for September 2016.

I find that the Tenant did not pay the rent for September 2016, within five days of receiving the Notice, I dismiss the Tenant's application to cancel the Notice dated September 2, 2016.

Under section 55 of the Act, when a Tenant's 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 Notice the Landlord provided 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. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Tenant failed to pay the rent within five days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenancy is over. The Landlord is granted an order of possession.

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: October 25, 2016

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Residential Tenancy Branch