



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OPR, OPL, OPB, MNR, MNDC, FF, RP

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

A substantial amount of documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

### Preliminary Matter

The tenants had originally just filed an application canceling a Notice to End Tenancy that was given for nonpayment of rent; however they subsequently amended that application to request a monetary order in the amount of \$9800.00 for compensation and rent abatements; however there was a previous decision issued December 15, 2016 in which the arbitrator states the following:

*The parties disagreed with respect to whether or not the Landlords agreed to install a furnace at the rental property. In the absence of any written agreement between the parties and the absence of any written notice from the Tenants with respect to installing a furnace, I find that the Tenants have not proven this portion of their claim and it is dismissed. **Likewise, their claim for compensation or rent abatement is dismissed. (My emphasis)***

It is my finding therefore that the tenants claim for compensation in rent abatements have already been dismissed and therefore the tenant cannot apply again. I therefore will not be issuing any of the monetary order requested by the tenants.

Further, the landlord has applied for an Order of Possession for landlord use, based on a Notice to End Tenancy that is dated September 7, 2016 however in a decision from a previous hearing involving the same parties the arbitrator stated;

*I cancelled all of the Notices to End Tenancy that were issued prior to October 5, 2016, and advised the Landlord's agent that the Landlords would have to issue a new Notice to End Tenancy if they chose to apply again for an Order of Possession.*

I therefore will not be issuing any order of possession based on the Notice to End Tenancy for landlord use.

#### Issue(s) to be Decided

The issues I will be dealing with therefore are, whether or not to cancel or uphold the Notice to End Tenancy that was given for nonpayment of rent, whether to issue an order of possession, and whether to issue a monetary order for outstanding rent.

I will also consider the tenants request for a repair order.

#### Background and Evidence

The parties agree that this tenancy began on November 1, 2015 with a total monthly rent of \$1400.00.

On November 9, 2016 the parties had a disagreement over whether or not the tenant was required to sign a receipt for use and occupancy only, and therefore the rent for November 2016 was not collected, although the parties disagreed over whether or not the tenant refused to pay the rent or whether the landlord refused to accept the rent.

The landlord subsequently, on November 10, 2016, personally served the tenant with a 10 day Notice to End Tenancy for nonpayment of rent. The tenant admitted receiving that notice on November 10, 2016.

The tenant subsequently filed a dispute of the Notice to End Tenancy on November 17, 2016, stating that he did not file earlier, because he also received a copy of the notice by registered mail and he thought that gave him extra time to file his dispute.

### Analysis

Sections 46(4) & 46(5) of the Residential Tenancy Act states:

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
  
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

In this case, the tenant has admitted that he received the notice on November 10, 2016, and his application and payment of fee for the application are both dated November 17, 2016. The tenant therefore did not dispute the notice within the five day period required, and, as stated above, the tenant is conclusively presumed to have accepted that the tenancy ends. There is nothing in the Residential Tenancy Act that extends the time limit in which to dispute, if the second notice is received by registered mail.

It is my decision therefore, that I will not cancel the 10 day Notice to End Tenancy and will issue an Order of Possession to the landlords for December 31, 2016

Further, I will also issue an order that the tenant pay the outstanding rent for the months of November 2016 and December 2016, for a total of \$2800.00. If the tenant pays the rent in cash, the landlord is required to give a receipt, the tenant, however, is not required to sign that receipt.

I also allow the landlords request for recovery of the \$100.00 filing fee.

Since this tenancy is ending, I will not be issuing any orders for repairs to the rental unit.

Conclusion

The tenants application to cancel the 10 day Notice to End Tenancy is dismissed without leave to reapply.

The tenants application for a repair order is dismissed without leave to reapply.

The tenants request for compensation and rent abatements have been previously dealt with in a previous arbitration, and are therefore "Res Judicata", and cannot be heard again.

Pursuant to section 46, and 55 of the Residential Tenancy Act, I have issued an order of possession to the landlords for 1:00 p.m. on December 31, 2016.

Pursuant to sections 67 and 72 of the Residential Tenancy Act I have issued a monetary order for the tenants to pay \$2900.00 to the landlords.

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 19, 2016

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Residential Tenancy Branch