



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on January 7, 2017.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

### Preliminary issue

In this case the tenant applied to be allowed more time to make an application to dispute a notice to end tenancy that was received on January 7, 2017. However, I find it not necessary to consider this portion of their application as their application was filed on January 12, 2017, which was amended on January 17, 2017.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenant testified that they received the Notice on January 7, 2017. The tenant stated rent was not paid because they were in the hospital for 5 days. The tenant stated that they paid the rent in full on January 17, 2017.

The landlord testified that the rent was not paid within 5 days. The landlord stated that they are not agreeable to reinstating the tenancy. The landlord stated that they have received occupancy rent for February 2017.

## Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

### **How to end a tenancy is defined in Part 4 of the Act.**

#### **Landlord's notice: non-payment of rent**

*46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

*(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

...

*(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.*

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit at the time their application was filed as the rent had not been paid.

In case the evidence of the tenant was that they were hospitalized on January 7, 2017 after they received the Notice; however, no medical records were produced for my review or consideration. Further, even if I accept the tenant was released from the hospital on January 12, 2017, that does not extend the statutory time limits under the Act, as they could have paid rent on January 12, 2017, if they had the rent. Rather than file an application for dispute resolution. Rent was not paid until January 17, 2017.

Based on the above, I find the tenant's application must be dismissed.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

**Order of possession for the landlord**

*55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

In this case, the landlord has accepted occupancy rent for February 2017. Therefore, I find it appropriate to extend the effective vacancy date to February 28, 2017. I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act. 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's application is dismissed. 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: February 08, 2017

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Residential Tenancy Branch