



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR OPR FF

### **Introduction:**

Both parties or representatives attended the hearing and gave sworn testimony. The landlord's representatives (hereinafter called the landlord) said they served the tenant personally with a 10 Day Notice to End the Tenancy for non-payment of rent dated May 31, 2017 to be effective June 10, 2017. He agreed it was served to an adult who resides with him but contends that it is the wrong name on the Notice. The tenant said they served the landlord with their Application for Dispute dated June 9, 2017 by registered mail and the landlord acknowledged receipt. I find the documents were legally served pursuant to sections 88 and 89 of the Act. The tenant applies pursuant to section 46 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy.

**Issues:** Is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. They testified that this is a complicated situation. The original tenancy began June 2014, rent was \$1400 and a security deposit of \$700 was paid. The tenant, N.R.B., said the tenancy was with C.B. who was the separated wife of the person claiming to be the current landlord. He said the arrangement was that rent was paid to the tenant's son, N.L.B. who acted as agent for the person they believed owned the property, an A.G. N.L.B. moved out of the unit on July 1, 2016 but continued to act as property manager for A. G. He said all rent was paid. He said the only contact he had with the person claiming to be landlord now was one time in January 2016 when he collected rent after his separated wife C.B. died in December 2015. He said that A.G. purported to be the owner of the property and his landlord at all times since C.B. died so the tenants believed they were paying rent legally to the owner through his agent. He provided an unsworn document with illegible signatures but purporting to be signed by him (N.R.B.) and N.L.B. and A.G. He promised to send by email a clearer copy with signatures to counsel for the landlord.

Counsel for the landlord submitted a sworn document exhibit of a title search conducted by them on July 19, 2017. It shows the property has been owned since June 20, 1996 by W.B., currently named landlord in this Application, C.B. the wife who died in 2015, and R.P.B. another relative. The landlord is claiming \$31,500 in rent and requesting an Order of Possession. There is no tenancy agreement, no rental ledger of rents collected, and no receipts in evidence. The tenant said his son has a receipt for the security deposit and said he will obtain it and send a copy to the landlord's counsel.

After further discussion concerning the incorrect name on the Notice to End Tenancy, the difficulty with the evidence with neither party having any written record of rents and receipts, the parties agreed voluntarily to settle on the following terms and conditions:

**Settlement Agreement:**

1. N.R.B. is the tenant of the property.
2. W.B. is the landlord and P.E. is his current agent who may collect rent on his behalf.
3. Rent is \$1400 a month and a security deposit of \$700 was paid in June 2014.
4. The tenant will obtain from his son, N.L.B., and provide a copy of the security deposit receipt which was signed by C.B. to the landlord and also a legible copy of the submitted document signed by N.R.B., N.L.B. and A.G. within one month of this decision.
5. From August 1, 2017 the tenant will pay W.B. or P.E. (as agent) the rent each month and the landlord or agent will provide a receipt. It is agreed that August 2017 rent may be paid on August 9, 2017.
6. The tenant N.R.B. will conduct himself properly with the landlord or agent as he knows now who the legal landlord is and agent. He has been cautioned the Police may be called if there is another incident of alleged assault and a possible One Month Notice to End Tenancy under section 47 may result.

**Analysis:**

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. I find the tenant had good reason to dispute the Notice as his name was incorrectly spelled and he has some evidence that he paid his rent. I set aside the Notice to End Tenancy dated May 31, 2017 as there is insufficient evidence that the tenant owes rent as claimed and the tenant was incorrectly named. The tenancy continues. Pursuant to the above noted settlement agreement, I find the tenancy continues on the terms and conditions outlined.

**Conclusion:**

I set aside and cancel the Notice to End Tenancy dated May 31, 2017. The tenancy continues. **The tenant may recover his filing fee of \$100 by deducting it from his rent.**

The parties identified by initials in the Decision and Order are identified on the first page of this Decision by their full names linked to their initials. For reasons of confidentiality, the first page of the Decision is not released to the public as part of the Decision. The tenancy continues under the following terms which the parties are ordered to follow:

**I HEREBY ORDER AS FOLLOWS:**

- 1. N.R.B. is the tenant of the property.**
- 2. W.B. is the landlord and P.E. is his current agent who may collect rent on his behalf.**
- 3. Rent is \$1400 a month and a security deposit of \$700 was paid in June 2014.**
- 4. The tenant will obtain from his son, N.L.B., and provide a copy of the security deposit receipt which was signed by C.B. to the landlord within one month of this decision. He will also provide a legible copy of the document signed by N.R.B., N.L.B. and A.G. which he provided in evidence today.**
- 5. From August 1, 2017 the tenant will pay W.B. or P.E. (as agent) the rent each month and the landlord or agent will provide a receipt. It is agreed that August 2017 rent may be paid on August 9, 2017.**
- 6. The tenant N.R.B. will conduct himself properly with the landlord or agent as he knows now who the legal landlord is and agent. He has been cautioned the Police may be called if there is another incident of alleged assault and a possible One Month Notice to End Tenancy under section 47 may result.**

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 03, 2017

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Residential Tenancy Branch