



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNR CNC

### Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The tenant requested:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 47 of the *Act*; and
- cancellation of the landlord's 10 Day Notice for Unpaid Rent or Utilities pursuant to section 46 of the *Act*.

The tenant attended the hearing while the landlord did not. The tenant was given full opportunity to be heard, to present evidence and to make submissions

The tenant stated that he was served with numerous notices to end tenancy. Specifically, the tenant was served with the following documents;

- 10 Day Notice to End Tenancy on March 5, 2017
- 10 Day Notice to End Tenancy on June 5, 2017
- 10 Day Notice to End Tenancy on August 2, 2017
- 1 Month Notice to End Tenancy for Cause on August 2, 2017
- 10 Day Notice to End Tenancy on September 2, 2017

All of these notices were placed on the tenant's door and are deemed under section 90 of the *Act* to have been served 3 days after their posting.

On August 8, 2017 the tenant served the landlord by way of Canada Post Registered Mail with a copy of his application for dispute resolution and evidentiary package. A copy of the Canada Post receipt was submitted to the hearing as part of the tenant's evidentiary package. Pursuant to sections 88, 89 and 90 of the *Act*, the landlord is deemed to have been served with these documents on August 13, 2017, five days after their posting.

Issue(s) to be Decided

Can the tenant cancel the landlord's notices to end tenancy?

Background and Evidence

The tenant provided undisputed evidence that this tenancy began in July 2009 and rent is currently \$1,025.00 per month. A security deposit of half of the original rent was collected at the outset of the tenancy by the landlord. The landlord continues to hold this deposit.

The tenant explained that rent was paid by a not-for-profit society who provided the tenant with a monthly rental subsidy. The not-for-profit society is responsible for a large portion of the tenant's rent. In March 2017 a rental increase came into effect. A clerical error on behalf of the not-for-profit society prevented this rent increase from being processed in time, resulting in a shortfall of rent of \$35.00. A detailed letter explaining this shortfall by the not-for-profit society was provided to the hearing as part of the tenant's evidentiary package.

The tenant said that this error had now been fixed, and rent for October 2017 was paid in its entirety.

The tenant argued that all elements of the landlord's 1 Month Notice to End Tenancy should be dismissed. The tenant said that he, "absolutely denied all allegations" related to the issuance of the 1 Month Notice to End Tenancy.

Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 1 Month Notice. I find that the 1 Month Notice to End Tenancy was served on the tenant on August 5, 2017. The tenant disputed this notice on August 8, 2017. The tenant has therefore applied to dispute this notice within the time frame provided by section 47 of the *Act*. Because the landlord did not attend the hearing and provided no explanation of any of the evidence submitted as part of their evidentiary package, I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the 1 Month Notice.

The tenant argued that the tenancy should not be cancelled as the result of unpaid rent, because rent had been paid on time and the shortfall of \$35.00 was the result of a clerical error. I find that despite the issuance of numerous Notices to End Tenancy for unpaid rent, the landlord waived their right to an Order of Possession. *Residential Tenancy Policy*

Guideline #11 explains the factors that must be considered when a landlord is found to have waived their rights to an Order of Possession.

*A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.*

*If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:*

- whether the receipt shows the money was received for use and occupation only*
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- the conduct of the parties.*

*There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel.*

I find that the landlord's conduct of accepting full rent payments for 7 months after the issuance of the first 10 Day Notice amounts to a waiver of this Notice. The landlord did not provide any evidence that they had issued any receipts for the rent payments or indicate that they were being accepted for "use and occupancy only." The landlord failed to provide any evidence that they specifically informed the tenant that the rent payments were being accepted for "use and occupancy only." I find that the landlord did not communicate with the tenant about their intention to pursue an end to this tenancy. Furthermore, the landlord presented no evidence at the hearing to show that in accepting rent each month he did not waive his right to seek an order of possession.

For the above reasons, and given the conduct of the parties, I find that the landlord waived their rights to pursue an Order of Possession based on the 10 Day Notices. I find that the landlord reinstated this tenancy by accepting full rent payments from the tenant on October 1, 2017.

On a balance of probabilities and for the reasons stated above, I dismiss the landlord's 10 Day Notice, dated March 5, June 5, August 2 & September 2, 2017. This tenancy continues under the terms of the tenancy agreement, until it is ended in accordance with the *Act*.

### Conclusion

The tenant is successful in his application to cancel the landlord's notice to end tenancy for cause and for unpaid rent. The landlord's 10 Day Notices of March 5, June 5, August 2 & September 2, 2017 are cancelled and of no force or effect. The landlord's 1 Month Notice of August 2, 2017 is dismissed.

This tenancy continues until ended in accordance with the *Act*.

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 12, 2017

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Residential Tenancy Branch