



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPR CNR MNR OLC MND MNDC O FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent and damage to the rental unit as well as other financial loss pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied pursuant to the Act for: cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; and an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended on the original hearing date, September 25, 2017 and provided testimony, submissions for approximately 66 minutes. After 66 minutes, the original hearing was adjourned until October 2, 2017. On this reconvened hearing date, both parties attended the hearing. The landlord acknowledged receipt of the tenant's materials for this hearing. The tenant testified that he did not receive the landlord's materials for this hearing. However, the Canada Post receipt and tracking information provided by the landlord show that a package was sent to the tenant by registered mail. The receipt and tracking information provided by the landlord show that the landlord's evidence package was refused. Therefore, I find that the tenant was sufficiently served with the landlord's documents and Application for Dispute Resolution in accordance with section 88, 89 and 90 of the Act.

### Preliminary Issue

The tenant applied to cancel the landlord's 10 Day Notice to End Tenancy. With his application for dispute resolution, the tenant provided a copy of a 10 Day Notice to End Tenancy dated and posted June 19, 2017 and effective June 29, 2017. The inclusion of this 10 Day Notice ("#1") implies that this 10 Day Notice is the notice he applied to cancel. However, the tenant also submitted an amendment application on July 19, 2017. In his application for amendment, the tenant wrote that the landlord had posted a new notice to end tenancy on his door. With this amendment application, the tenant did not submit a copy of the second 10 Day Notice issued on July 14, 2017 ("#2"). The tenant made a further amendment to his application indicating that he had received a third new notice. He wrote that the notice dated June or July 26, 2017 ("#3"). The tenant did not submit a copy of the third 10 Day Notice in accordance with the Act. Within the tenant's evidentiary materials submitted for this hearing, the tenant provided copies of: a 10 Day Notice dated July 14, 2017; and the 10 Day Notice dated July 26, 2017.

The tenant filed his original application for dispute resolution on July 13, 2017. His original application was an application to cancel a notice to end tenancy dated June 19, 2017. To dispute the June 19, 2017 10 Day Notice, the tenant would have been required to file for dispute resolution by June 27, 2017. The tenant did not apply on or before this date.

To dispute the July 14, 2017 notice to end tenancy, the tenant would have been required to file for dispute resolution by July 22, 2017. The tenant applied for dispute resolution (by way of an amendment to the tenant's application) on July 19, 2017.

To dispute the July 26, 2017 notice to end tenancy, the tenant would have been required to file for dispute resolution by August 3, 2017. The tenant applied for dispute resolution (by way of an amendment to the tenant's application) on July 28, 2017.

With respect to the tenant's application at this hearing for more time to make his application pursuant to section 66 of the Act, I note that an arbitrator **may extend a time limit in only exceptional circumstances**. I find that the onslaught of at least 3 (possibly more) 10 Day Notices issued to the tenant within approximately 2 calendar months provides exceptional circumstances to justify extending the 5 day time limit for the tenant to apply generally. The tenant's intention was clear in all of his application forms completed: the tenant intended to dispute the Notice(s) to End Tenancy. Therefore, I find that the landlord knew or ought to have known that the tenant intended to dispute all of the 10 Day Notices to End Tenancy.

Based on the evidence provided to me, I have found there are exceptional circumstances to justify extending the time limit for the tenant in making the original application. In this case, the tenant's application to cancel the 10 Day Notice(s) relied upon by the landlord is granted more time.

#### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled or is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary order for unpaid rent, damage to the unit and other financial loss incurred as a result of this tenancy? Is the landlord entitled to recover the filing fee for this application?

#### Background and Evidence

This tenancy began on February 1, 2014 as a month to month tenancy. A copy of the residential tenancy agreement was submitted as evidence at this hearing. The rental amount on the tenancy agreement indicated \$800.00 to be paid on the 1<sup>st</sup> of each month. The landlord continues to hold a \$300.00 security deposit paid by the tenant prior to the outset of this tenancy (January 26, 2014).

As well as the copy of the residential tenancy agreement, a copy of the addendum to the rental agreement was submitted as evidence for this hearing. The agreement indicates that the tenant will act as a resident manager and, in exchange, his rent will be reduced by \$200.00

The agreement reads, in part, as follows,

*This agreement form [sic] an integral part of the rental agreement between landlord [name] and the tenant [name] and will be in force and effect until rental agreement is valid and effective or until landlord makes any amendment or notifies otherwise in writing.*

*The tenant [name] has agreed to the following terms:*

1. *[tenant name] claimed that he is a handy man and can do all necessary repairs and maintenance of all electrical, plumbing, drywall, framing, painting, roofing, etc [sic] needed to keep any house in great shape and well maintained and has all necessary tools & equipment and want to act as resident manager for the landlord.*
2. *[tenant name] requested an adjustment of \$200 in his monthly rent to make his monthly rent payable in cash to \$600.00 per month (\$800-\$200) and has offered to act as resident manager taking care of all necessary work as generally expected of a resident manager in respect of [sic] all four other rental units of the property at [rental unit address] and in particular the following tasks:*
  - *Make doors around washrooms in suites at the ground floor*
  - *Make door in the two bedroom unit*
  - *Do all necessary drywall, remodeling, painting etc of all units*
  - *Paint all doors, baseboards, windows etc.*
  - *Arrange for dryer and install at appropriate place*
  - *Install electrical switches necessary for operation of stoves in rental units where necessary*
  - *Ensure all electrical are properly connected and has proper wiring and earthing...*

The work listed above was to be completed prior to February 15, 2014. The addendum listed other, ongoing duties including internet access, supervising property for illegal activity and pets as well as managing parking and storage. An appendix was attached to the addendum that indicated extra amounts that the tenant may earn. With respect to the timeline of these responsibilities, the addendum read, "Landlord will have full right to provide relief from any of the responsibility specified above by informing [the tenant] and serving a written notice to him by e-mail on his last known e-mail ID.

The landlord referred to an email and letter dated July 18, 2017 informing the tenant that his services were no longer needed. The letter also stated that "you have been served notice of ending tenancy on July 14, 2017. Your appointment ends with that notice". In the letter, the landlord also refers to a previous notice to have the tenant's tenancy and services end on June 19, 2016 however "the same was not instated and since then you have been self-appointed resident manager".

A series of correspondence between the parties was submitted as evidence for this hearing. They discuss the fine details of their ongoing relationship as resident manager and landlord. The landlord issued and submitted multiple 10 Day Notices to End Tenancy with a variety of dates. The landlord applied for an Order of Possession for the rental unit, a monetary order for unpaid rent and other losses he has suffered as a result of the tenant's actions while the tenant has sought to cancel the landlord's 10 Day Notice to End the Tenancy for Unpaid Rent ("10 Day Notice").

The tenant disputes any and all 10 Day Notices to End Tenancy issued by the landlord. He states that he has paid the agreed upon rental amount and continued to engage in the activities of the resident manager. The landlord confirmed that he continued to accept \$500.00 or \$600.00 per month from 2015 (the start of the tenancy) until the present date. The tenant's lawyer argued that the landlord's ongoing acceptance of a lower rent effectively acquiesced to a revised agreement between the tenant and landlord.

### Analysis

At the hearing I provided a full opportunity to both the landlord and tenant to explain the nature of their agreement. There was very little that they were able to agree upon. With respect to the tenant's claim for a monetary award in the amount of \$35, 000.00, he provided no clear description of the basis for his monetary claim and no justification of the amount sought. For that reason, in accordance with section 59(2)(b), I find that the tenant did not provide full particulars of his monetary claim. The purpose of the provision is to provide the responding party with enough information to know the applicant's case so that the respondent might defend him or herself. The landlord stated that he was unclear on the details or extent of the tenant's monetary claim. In these circumstances, as the tenant was unable to elucidate the details of his claim, I find that the landlord's position is not unreasonable. I find that the tenant did not sufficiently set out the details of his dispute in such a way that the landlords would have known what the tenant was seeking in the claim. Therefore, **the tenant's application for \$35, 000.00 is dismissed with leave to reapply.**

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. On issuing a 10 Day Notice to End Tenancy for Unpaid Rent on July 26, 2017 the landlord claimed that the tenant had failed to pay rent in accordance with the Act and residential tenancy agreement. Therefore, a determination must be made with respect to the amount of rent the tenant was required to pay.

I accept the testimony of the tenant that, until receipt of the letter/email dated July 18, 2017, he believed that his agreement to reduce his rent and conduct the activities of a resident manager was ongoing. I accept the submissions of the tenant's lawyer that the landlord acquiesced to the reduced amount. I find that the landlord did not provide any clear indication that the resident manager role agreement was ended prior to July 18, 2016. I find that the tenant was candid in his testimony with respect to his understanding of the agreement and the documentary evidence he submitted to support his position. I find that the tenant was right to rely on the residential tenancy agreement in combination with the addendum to the agreement as well as the appendix to the agreement.

*"Contra Proferentem"* is a rule courts use when interpreting contracts. In plain language, it means that if there is an ambiguous clause in a contract, it will be interpreted against the party responsible for drafting the clause. The party who drafted the clause, created or relied on the document is responsible for any ambiguity within the document. It is essential, in the creation of a contract between parties that the "drafter" writes the contract in the clearest possible terms.

The addendum and appendix, in place since the outset of this tenancy supplement the information provided in the residential tenancy agreement. The rental amount on the tenancy agreement of \$800.00 was to be reduced based on the conditions of the addendum and appendix to \$600.00 per month or less, based on the details of the addendum. I will not attempt to break down each month to determine if the appendix agreement was active on each month of this tenancy. It is sufficient to say that, based on the evidence of both parties, the tenant was acting (paying rent) in accordance with both the addendum and the appendix. I also note that the tenant paid \$300.00 security deposit at the outset of this tenancy suggesting a monthly rental amount of \$600.00 in the regular course of matters.

The way that the parties acted in the 3 year duration of this tenancy lends credence to the continuation of the conditions of the addendum and appendix. The tenant provided undisputed testimony that he has,

from the start of his tenancy in 2014 until very recently acted as the resident manager making repairs and addressing the requests of the tenants. The landlord, over the course of 3 years, accepted a reduced rental amount from the tenant thereby establishing this ongoing relationship and pattern of a reduced monthly rental amount.

There is some ambiguity in the way that the parties have interpreted the residential tenancy agreement, addendum and appendix. Their current dispute is a result of the ambiguity of this tenancy agreement and the addendum that references deductions for work done by the tenant. In this case, I find that the principle of *contra proferentem* establishes that the ambiguity in the interpretation of what rental amount was to be paid during this month to month tenancy agreement should be decided in the tenant's favour. Although the landlord was using a Standard Tenancy Agreement authorized by the RTB, the landlord as the party providing the Agreement for signature bears responsibility for ensuring that this provision of the Agreement was completed properly and left no room for ambiguity.

The landlord was also the drafter of the addendum and thereby bears the responsibility of any ambiguity or misunderstanding based on that document. Even if I am wrong with respect to the ambiguity in this provision of the Agreement, I would find that on a balance of probabilities the tenant's testimony should be accepted. I find that the tenant's testimony was candid but that he was clear and decisive in his version of events. He provided detail to reflect the work that he had done during the course of his tenancy and time as a resident manager.

Therefore, when the landlord issued his 10 Day Notice to End Tenancy on July 26, 2017, the tenant had only known for 8 days that his services were no longer required and that therefore he was required to pay the entire rent as outlined in the residential tenancy agreement (\$800.00). I find that the tenant's rent is, as of August 1, 2017 \$800.00 per month in accordance with the release from services required written by the landlord on July 18, 2017.

Based on the evidence before me at this time, I find that the landlord has not provided sufficient evidence or convincing testimony to validate any of the 10 Day Notices issued by the landlord to the tenant. Therefore, the tenant's application pursuant to section 47(4) of the Act made within the appropriate timeline, subject to my comments above, to cancel the Notice is successful. The 10 Day Notice(s) are cancelled.

The landlord also sought a monetary amount - \$3745.61 from the tenant. He testified that the tenant failed to pay the rental amount for the duration of the tenancy. Based on my findings above that it was only at July 18, 2017 that the tenant became aware and obliged to pay the regular residential tenancy agreement rental amount, I find that the landlord is not entitled to a monetary award at this time.

With respect to both parties' applications for monetary orders, I dismiss their applications. I also dismiss their applications to recover the filing fees for these applications.

### Conclusion

I grant the tenant's application to cancel the notice to end tenancy. Any notice issued prior to August 1, 2017 is cancelled.

I dismiss the tenant's monetary application in its entirety with leave to reapply.

I dismiss the landlord's application for an Order of Possession.

I dismiss the landlord's monetary application without liberty to reapply.

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 13, 2017

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Residential Tenancy Branch