



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O, OPR, MNR, MNSD, FF

### Introduction

This matter was set for hearing by telephone conference call at 9:30 a.m. on this date to deal with cross applications. The landlord and a translator appeared at the hearing at 9:34 a.m. and Advocates for the tenant appeared at 9:40 a.m. The Advocates stated that they were expecting the tenant to attend their office to call into the hearing but he did not show up so they called in on his behalf. The Advocates stated they did not have authorization to make representations on behalf of the tenant but would provide statements of fact known to them.

The tenant had filed a Tenant's Application for Dispute Resolution on August 18, 2017 indicating he was seeking "other" remedies. The details of dispute reference the landlord's refusal to accept payment and the landlord alleging the tenant owed rent from two years prior; however, the tenant did not indicate he had received a Notice to End Tenancy or provide a copy of a Notice to End Tenancy with his Application for Dispute Resolution. The landlord stated that he was not served with a Tenant's Application for Dispute Resolution. The tenant's Advocates had no knowledge as to whether the tenant served the landlord with a Tenant's Application for Dispute Resolution. Accordingly, I accepted that the landlord was not served with the Tenant's Application for Dispute Resolution and I dismissed the tenant's application with leave to reapply.

The landlord testified that he served the tenant with the Landlord's Application for Dispute Resolution in person at the rental unit within three days of filing. In the absence of anything to contrary, I accepted that the tenant was duly served with the landlord's application and I continued to deal with the landlord's application.

The landlord applied for an Order of Possession for unpaid rent or utilities and the landlord had submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated August 14, 2017. In the details of dispute on the landlord's Application for

Dispute Resolution the landlord indicated he was seeking to end the tenancy for other reasons as well. The reasons appear consistent with ending a tenancy for cause; however, the landlord has not served the tenant with a Notice to End Tenancy for Cause. Accordingly, it was not before me to determine whether the tenancy should be ended for cause and I proceeded to determine whether the landlord has established that the tenancy should be ended pursuant to the 10 Day Notice dated August 14, 2017.

The landlord also applied for a Monetary Order for unpaid rent or utilities for the same amount that appears on the 01 Day Notice; and, authorization to retain the security deposit.

Issue(s) to be Determined:

1. Is the landlord entitled to an Order of Possession based upon the 10 Day Notice to End tenancy for Unpaid Rent dated August 14, 2017?
2. Is the landlord entitled to a Monetary Order for unpaid rent and utilities as requested?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The landlord stated that there is no written tenancy agreement with the tenant; however, the landlord signed a document so that the government would pay the tenant's rent. The landlord could not recall when the tenancy started but believes it was in 2015 or thereabouts. The landlord testified that the monthly rent is \$500.00 and is due on the first day of every month. The landlord collected a security deposit of \$250.00.

The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the Notice") dated August 14, 2017. The Notice indicates the tenant failed to pay rent of \$500.00 that was due July 1, 2017. In the utilities section of the Notice, the landlord wrote: "Beforre owe \$500.00 rent", "2016 movie fees, tv box rent \$637.53" and "Total: \$1,637.53"

I had to ask the landlord to describe service of the above described 10 Day Notice upon the tenant a number of different times to get a complete response. Initially, the landlord stated the 10 Day Notice was served in July 2017. Then he indicated he was told to issue a new 10 Day Notice and he did that in August. Then he stated it was served to the tenant in person on August 14, 2017.

As to whether the landlord collected rent for July 2017, I was provided varying responses. The landlord stated that he did collect rent for the month of July 2017 in August 2017. When I asked for the day in August 2017 the landlord stated July 25, 2017. Then the landlord indicated that it is August 2017 rent that is not paid.

Given the varying and inconsistent responses provided by the landlord, I found I could not rely upon the landlord's testimony and I informed the parties that I would not provide an Order of Possession to the landlord based on the 10 Day Notice before me and I would be dismissing the landlord's Application for Dispute Resolution with leave.

I also noted that the landlord included outstanding rent in the utilities section of the 10 Day Notice which is inappropriate and does not indicate the month the rent was not paid. Further, it appears that there was not a written demand for utilities before the 10 Day Notice was issued.

The landlord's translator explained that the landlord has difficulty with spoken and written English. I suggested the landlord familiarize himself with the tenancy laws and forms and that if assistance is required he may contact the Information Officers with the Residential Tenancy Branch; review the Residential Tenancy Branch website; or, enlist the services of a property manager or agent.

The tenant's Advocate requested clarification on the enforceability of the 10 Day Notice dated August 14, 2017. I informed that the landlord may not rely upon the August 14, 2017 Notice to end the tenancy in the future. However, if rent or utilities remain outstanding the landlord may issue the tenant with another 10 Day Notice. If utilities are outstanding, the landlord is required to first provide the tenant with a written demand for payment of utilities and if the utilities are not paid within 30 days of receiving the written demand the landlord may serve the tenant with a 10 Day Notice indicating utilities are outstanding. Alternatively, the landlord may serve a 1 Month Notice to End Tenancy for Cause if the circumstances warrant it or the parties may execute a Mutual Agreement to End Tenancy.

### Analysis

An applicant bears the burden to prove they are entitled to the remedies they seek on their Application for Dispute Resolution. In this case, I found the landlord's varying and inconsistent testimony to be unreliable and I was not satisfied the landlord is entitled to the remedies he seeks. However, in appreciation the landlord appeared to have difficulty communicating in English; that the tenant may owe rent and/or utilities to the landlord; and, the tenant was not in attendance at the hearing or would otherwise be prejudiced, I dismiss the landlord's Application for Dispute Resolution with leave to reapply.

### Conclusion

The tenant's Application for Dispute Resolution and the landlord's Application for Dispute Resolution are dismissed with leave to reapply.

The 10 Day Notice dated August 14, 2017 is no longer enforceable; however, the landlord remains at liberty to serve another Notice to End Tenancy to the tenant as appropriate in the circumstances.

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: November 09, 2017

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Residential Tenancy Branch