



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MT

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated February 12, 2018 and for an extension of time to do so. By amendment he also seeks to cancel a ten day Notice to End Tenancy for unpaid rent.

It was apparent at the start of the hearing that the one month Notice in question was not in the approved form as required by s. 52 of the *Residential Tenancy Act* (the “Act”). It is a form from 2011 and not the current form RTB-33 which contains a specific provision requiring “Details of Cause.” As the use of the approved form is deemed mandatory by the *Act* the form in question has no lawful effect, whether or not the tenant has applied or applied late to cancel it.

As a result the one month Notice cannot serve to have ended the tenancy. The landlord is free to serve the tenant with another one month Notice, based on the same cause, in the approved form.

Regarding the ten day Notice for non-payment of rent, the parties agree that the landlord received the rent in the form of a cheque from the welfare office. The landlord returned the cheque to the tenant in the belief that the one month Notice had ended the tenancy. Ultimately the tenant gave the cheque back to the landlord and it has been cashed. The rent was paid, though possibly after the expiry of the five day payment period set out in the Notice.

In these circumstances, given that the tenancy had not ended as a result of the one month Notice, the tenant's tendering of the rent (through the welfare office) was a valid tender and the landlord by returning the cheque cannot maintain the position that the rent was not paid.

In result neither the one month Notice nor the ten day Notice have ended this tenancy.

This decision was rendered orally at hearing and 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: May 02, 2018

Residential Tenancy Branch