



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MT, CNR, AAT, MNDCT

### Introduction

This hearing was scheduled in response to the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

On February 27, 2019 the tenant filed an amendment to include;

- a monetary order for damage or compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenant's application but denied receipt of the tenant's amendment.

The tenant testified that on February 28, 2019 she had a friend personally serve the landlord with a copy of the amendment and evidence. While I accept that the landlord was duly served with the application, I do not accept the landlord was served with the amendment. In the absence of corroborating evidence such as a proof of service or witness testimony, I find the tenant has failed to establish the amendment was served. For this reason, I do not accept the tenant's amendment; she is at liberty to file a new application for monetary compensation.

At the outset of the hearing the tenant testified that she no longer occupies the unit or requires access to the unit and thereby withdraws her application to cancel the 10 Day Notice and order of access. The landlord agreed that it appears the tenant no longer

resides in the unit, however to ensure she regains possession of the unit, the landlord requested an order.

Under the RTB Rules of Procedure section 5.0.1 a tenant may not withdraw an application to cancel a Notice to End Tenancy unless the tenant has the landlord's written consent to withdraw the application. Based on the above, I do not permit the tenant to withdraw her application to cancel the 10 Day Notice.

#### Issue(s) to be Decided

Is the tenant entitled to more time to make an application to cancel the landlord's 10 Day Notice? If so, is the tenant entitled to cancel the landlord's 10 Day Notice?

#### Background and Evidence

The tenant testified that she received the landlord's 10 Day Notice, by way of posting to the unit door, on December 11, 2018.

#### Analysis

Section 47(4) of the *Act* provides that upon receipt of a notice to end tenancy the tenant may, within 5 days after receiving the notice, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Because the 10 Day Notice was received on December 11, 2018 the tenant was required to file her application to dispute the 10 Day Notice no later than Monday, December 17, 2018. The tenant filed her application on January 25, 2019, past the allotted time. The tenant failed to establish exceptional circumstances existed which prevented her from filing an application in time. For the above reasons, I dismiss the tenant's application for more time to make an application to cancel the landlord's 10 Day Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Based on the 10 Day Notice before me, I find the landlord is entitled to an order of possession.

Conclusion

The tenant's application for more time to cancel the landlord's 10 Day Notice, to cancel the landlord's 10 Day Notice and order of access is dismissed without leave to reapply.

The tenant's amendment for a monetary order is not accepted; she is at liberty to file a new application for monetary compensation.

An order of possession is granted to the landlord effective **two (2) days after service on the tenant**.

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: March 11, 2019

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Residential Tenancy Branch